

Message

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**From:** Deegan, Dave [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5D9B02A32ED4C05879FA6730A89158D-DEEGAN, DAVE]  
**Sent:** 2/28/2019 1:17:37 PM  
**To:** craig\_lemoult@wgbh.org  
**Subject:** Re your message

Hi Craig, passing this along in reference to your call last night.

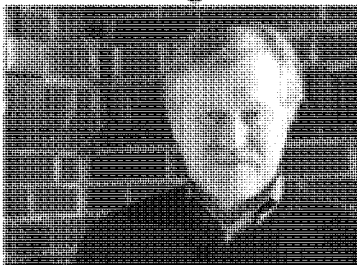
Thanks,  
Dave

-----  
Dave Deegan  
US EPA, Region 1  
617.918.1017 - office  
617.594.7068 - mobile  
[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)

Begin forwarded message:

**From:** "Szaro, Deb" <[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)>  
**Date:** February 28, 2019 at 7:47:21 AM EST  
**To:** R1 ALLEPANE EPA Employees Only <[R1\\_ALLEPANEPAONLY@epa.gov](mailto:R1_ALLEPANEPAONLY@epa.gov)>  
**Subject:** Announcing our new Regional Administrator - Paul Mercer

I'm delighted to inform you that Paul Mercer has been appointed as our Regional Administrator and will start on Monday, March 4<sup>th</sup>. <!--[if !vml]--> <!--[endif]-->



Paul is a seventh generation Mainer and lifelong outdoorsman who grew up in Bucksport, Maine. He is a graduate of Maine Maritime Academy and began his working career traveling the globe as a Marine Engineer aboard US merchant vessels. Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America. He has enjoyed successes such as achieving major reduction of emissions and life extension at the paper mill in Bucksport, Maine as a lead developer of the Bucksport Energy Project.

A member of the senior management team at Maine Maritime, Paul held positions as Associate Professor and Department Chair within the Engineering Department, and Assistant to the President for Sustainability. He also served as Director of Facilities, Vice President of Advancement and Vice President of Operations. He was instrumental in promoting innovation and environmental initiatives while at the Academy.

As Commissioner of the Department of Environmental Protection until last October, Paul combined professional experience and dedication to protecting Maine's natural resources to promote the needs of the State. Using professional and personal ethics, collaboration, open communication and common sense, he encouraged innovation and businesses to support a sustainable economy while protecting the State's valuable environment. He's long promoted the need for EPA's Office of Research and Development to align with state needs and resources, and has been a strong proponent of ORD scientists visiting states as a way to meet those needs.

Paul's personable, collaborative leadership style shined through at regional meetings of state environmental commissioners, where he has earned their respect and support. Paul is committed to furthering EPA's mission and working closely with our state partners.

Paul is a dedicated family man. He and his wife called Penobscot, Maine their home and they have two grown children and a grandchild.

Please join me for an All Hands - Meet and Greet for Paul at 10:00 am on Monday, March 4<sup>th</sup> in Leighton Hall with video to the Kennebec at the Lab.

**From:** Kristen Conroy [conroy.kristen@epa.gov]  
**Sent:** 3/8/2019 12:01:24 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** Inside EPA News Clips, Friday, March 8, 2019



## Print/Online News

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### MERCER, EPA REGION 1 ADMINISTRATOR PICK, WITHDRAWS AT START OF TENURE

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*...and avoid unintended consequences," she said. Anastasio commended **EPA** Administrator Andrew Wheeler's Oct. 30 memo urging agency...*

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## MERCER, EPA REGION 1 ADMINISTRATOR PICK, WITHDRAWS AT START OF TENURE

*Inside EPA* | 03/07/2019

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Posted March 04, 2019

Former **Maine** environment chief Paul Mercer has declined the role of **EPA Region 1** administrator on the day he was due to start the position, following environmentalists' criticism that his work under the state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

On the morning of March 4, when Mercer was scheduled to join the agency, Acting **Region 1** Administrator Deb Szaro told staff that Mercer had declined the job, according to two people familiar with the announcement.

The sources said they did not know the reason for Mercer's decision.

But the reversal comes after Szaro announced Mercer's appointment to lead **Region 1** in a Feb. 28 email that highlighted Mercer's work for private engineering firms and said he would support aligning **EPA's** Office of Research and Development research with state needs and resources.

"Paul has combined his experience as a Principal of engineering firms in **Maine** with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America," the email says, adding that his past successes include reducing emissions from a Bucksport, **Maine** paper mill, while also extending the life of the mill.

Environmentalists expressed skepticism about Mercer's appointment, citing his leadership of the **Maine** Department of Environmental Protection (MDEP) during the tenure of former conservative Gov. Paul LePage (R), who advocates say failed to adequately enforce environmental laws.

LePage officials also sparred with the Obama **EPA** over **water quality** standards. In the fall of 2015, prior to Mercer's appointment as commissioner, MDEP sued **EPA** over the agency's disapproval of the state's updated **water quality** standards, claiming **EPA** "unlawfully usurps" the state's role, a position supported by industry groups.

Kyla Bennett, director of science policy for the Public Employees for Environmental Responsibility (PEER) told *Inside EPA* March 1 in response to news of Mercer's appointment to lead **EPA** that "The whole LePage administration, their whole M.O. was not to enforce environmental laws.

"I'm suspicious of anybody that the Trump administration appoints, and I'm doubly suspicious of anybody that comes out of the LePage administration," she added.

Still, some environmentalists in the region said Mercer would have been better than other potential **Region 1** candidates, suggesting his work at MDEP would encourage him to focus on strict environmental protection.

"Given who our president is right now, and the harsh anti-environmental record that they've been pursuing, I think Paul Mercer comes in with a strong appreciation generally for the importance of a clean environment, clean air, clean water, the role of **EPA**," Pete Didisheim, advocacy director for the Natural Resources Council of **Maine**, told the Boston radio station WGBH news.

"And I would hope that he would stand up for [those] values in that mission on behalf of the **New England**

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states."

Mercer would have replaced former **Region 1** Administrator Alexandra Dunn, who was recently sworn in as **EPA's** new toxics chief.

Any new **Region 1** administrator will have to address ongoing attrition of the region's workforce, which some agency employees have suggested is related to the implementation of President Donald Trump's deregulatory agenda.

Last month, current and former **Region 1** staff told WGBH news that the region is shrinking from attrition as retiring staff have not been replaced, and that remaining workers are increasingly frustrated with growing workloads.

"I don't think it's any secret to say that we feel like certainly we're in the crosshairs," Margherita Pryor, who has worked for **EPA** for nearly 40 years, told the station. -- Dave Reynolds (dreynolds@iwpnews.com)

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## **EASTERN STATES, SENATE DEMOCRATS FAULT EPA INTERSTATE AIR POLLUTION POLICY**

**Inside EPA** | 03/07/2019

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Posted March 05, 2019

Eastern states and Senate Democrats are attacking what they say is **EPA's** inadequate approach to policies for curbing interstate air pollution hindering states' attainment of federal air standards, with several states ramping up technical and legal challenges to the agency while senators attack funding cuts to key emissions programs.

The push-back against the agency, highlighted at a March 5 Senate Environment & Public Works Committee (EPW) air panel hearing and in recent letters and legal filings, reflects long-running concern from downwind states that the Trump administration is not taking necessary steps to help them cut air pollution from upwind states.

Members of the **Ozone** Transport Commission (OTC) of 12 Mid-Atlantic and Northeastern states have attempted to force **EPA** to regulate upwind states' emissions through use of Clean Air Act section 126, which allows them to petition the agency for such regulations. But the administration has said it does not believe new federal action is necessary to help states attain national ambient **air quality** standards (NAAQS) and has rejected several petitions.

Sen. Tom Carper (D-DE), ranking member of the full EPW, said at the hearing that "instead of working with states on solutions to our clean air problems, Administrator [Andrew] Wheeler's **EPA** has actually made it more difficult for states, especially downwind states, to meet clean air goals," citing the section 126 petitions as an example.

**EPA's** position is underpinned by **air quality** modeling that shows almost all areas of the country, except California, attaining NAAQS for **ozone** by 2023.

But states and environmentalists suing the agency say this target date is irrelevant and unlawful, and OTC is now pushing back on **EPA's** technical analysis by calling it deeply flawed.

In a Jan. 23 letter to **EPA** air chief Bill Wehrum, OTC says **EPA's** approach wrongly predicts **ozone** NAAQS attainment, when high levels of the criteria pollutant will in fact persist beyond 2023.

OTC Chair Shawn Garvin, who also serves as Delaware's environment secretary, takes aim at **EPA's** technical analysis underpinning its recent decisions on interstate **ozone** pollution. **EPA** is showing a "discernible trend" to "present technical information in an incomplete way that favors **EPA's** preferred policy," he says.

The agency "selectively presents information that undermines and mischaracterizes the continued need for emission reductions from upwind states," Garvin says.

He singles out for criticism an Aug. 31 memo by Peter Tsirigotis, director of **EPA's** Office of **Air Quality** Planning and Standards, which "indicates that **EPA** intends to revise the threshold used to determine significant **ozone** contribution from upwind states to downwind nonattainment areas."

The Tsirigotis memo allows states to depart from the Obama **EPA's** yardstick to determine "significant contribution," which employed a threshold of 1 percent of the applicable NAAQS, combined with an assessment of cost-effective control technology options. States could now use a higher 1 ppb threshold instead, although **EPA** does not mandate this change.

Using a higher threshold could allow states to claim they have no significant contribution and escape the need to impose more-stringent control measures in good neighbor state implementation plans, which are emissions reductions plans states craft to detail how they will attain NAAQS.

The memo "weakens the effectiveness" of the good neighbor provisions and "appears to be based on faulty technical analyses," Garvin says. "The significance thresholds in the **EPA**/Tsirigotis memorandum do not provide relief" for coastal states "and will further delay public health protection to our citizens."

The OTC letter also faults the "overly optimistic" modeling **EPA** uses to predict near-universal **ozone** NAAQS attainment by 2023, which includes failings states are likely to cite in litigation over section 126 petition denials.

For example, Garvin says **EPA** ignored modeling results it did not like; used inaccurate assumptions to estimate emissions profiles for sources of **ozone** precursor chemicals; failed to properly characterize "key meteorological regimes and conditions for **ozone** transport;" assumed emissions reductions not backed by enforceable controls; failed to consider low-cost controls that can be implemented before 2023; and failed to factor in the effect of Trump **EPA** regulatory rollbacks on future emissions. Pending Litigation

Litigation over several Trump **EPA** denials of section 126 petitions is already pending in federal court, with a case in the U.S. Court of Appeals for the District of Columbia Circuit moving to the substantive briefing stage.

Also, East Coast states and environmentalists in separate March 4 filings to the D.C. Circuit set out issues they intend to raise in *State of New York, et al. v. EPA, et al.*, a lawsuit challenging **EPA's** Dec. 21 finding that 20 Eastern states will meet **EPA's** 2008 **ozone** NAAQS by 2023.

**EPA** says that attainment by these states of the 2008 NAAQS, set at 75 parts per billion (ppb) by the George W. Bush **EPA**, will satisfy the states' "good neighbor" obligation to eliminate their air pollution that contributes "significantly" to problems attaining or maintaining NAAQS in other states downwind. The agency relies on this finding to avoid further toughening of its Cross-State Air Pollution Rule (CSAPR) power plant emissions trading rule, finding that states need only meet the program's existing state emissions caps.

But East Coast states reject the agency's analysis as flawed and unrealistic. Further, **EPA** is not taking additional steps to help states meet the tougher 2015 **ozone** NAAQS, set by the Obama **EPA** at 70 ppb. The agency predicts almost all areas of the country will attain the tougher NAAQS by 2023.

States including New York, **Connecticut**, Delaware, Maryland, **Massachusetts** and New Jersey in their filing say **EPA's** reliance on 2023 as a target year to model compliance is "inconsistent with applicable precedent, and arbitrary and capricious because it failed to evaluate, consider, or account for present and ongoing nonattainment and/or maintenance problems with the 2008 **ozone** standard in downwind areas."

The states face attainment deadlines in 2021, and cost-effective measures are available now to help states meet that goal, yet **EPA** refused to consider these, the states argue.

Further, **EPA's** stance "relies on overly optimistic assumptions regarding the impacts of existing rules," relies on

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"no enforceable emission limitations," and is dependent on "state data and limited analyses," the states say. Environmentalists in their filing raise very similar arguments. Senate Hearing

At the EPW Clean Air and Nuclear Safety Subcommittee hearing, Carper and other Democrats faulted the administration's approach to air pollution. They said it appears at odds with **EPA's** stated goal of "cooperative federalism" through which it would give greater environmental policy powers to states.

Panel Republicans held the hearing to criticize the Obama administration's approach, deemed heavy-handed by GOP critics, and contrast this with the Trump administration's supposedly more state-friendly approach.

But EPW member Sen. Sheldon Whitehouse (D-**RI**) said, "I think cooperative federalism is a sham," citing in particular the agency's denial of section 126 petitions from **Connecticut**, Delaware and Maryland. "The Trump **EPA** has zero intention of listening to the states," he said.

"One state's onerous regulation is a neighboring state's clean air," he said. **Rhode Island** cannot regulate "a spewing power plant" in Pennsylvania, West Virginia or Ohio, Whitehouse said, yet **EPA** will not force upwind states to cut **ozone**-forming emissions of nitrogen oxides that contribute to coastal **ozone** problems.

Carper separately said that **EPA** is rejecting the requests to tackle interstate air pollution even as the agency seeks to reduce federal funding to states to help with their emissions reduction programs.

"So we have a situation in which Administrator Wheeler's **EPA** is denying downwind states' efforts to hold upwind states accountable for their own air pollution and expanding air pollution that crosses state borders, while taking away critical financial tools and programs that helps states address pollution," he said.

GOP senators at the hearing did not address the interstate **ozone** issues, but focused instead on alleged Obama-era federal overreach and what they said is an improved state-federal relationship under President Donald Trump's **EPA**. -- Stuart Parker (sparker@iwpnews.com)

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## ACWA BACKS EPA'S 'COOPERATIVE FEDERALISM' BUT SEEKS GREATER STATE ROLE

**Inside EPA** | 03/07/2019

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Posted March 04, 2019

Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators (ACWA), is welcoming the Trump administration's "cooperative federalism" push to give states more environmental policymaking authority but urging greater state input on issues like emerging contaminants and the Clean Water Act's (CWA) scope.

"One really good thing that this administration has done is they are working to institutionalize these concepts that other administrations have been talking about," said Anastasio on a Feb. 28 Environmental Law Institute (ELI) webinar on "Rethinking the Federal State Relationship."

But while noting the agency has taken "concrete" steps toward institutionalizing cooperative federalism, she said

that room for further collaboration on environmental policies remains with ACWA and other state officials. ACWA represents many state and interstate water programs.

"We need to keep reminding our federal partners that there is a wealth of expertise at the state level" and that greater cooperation "can help us create better programs and avoid unintended consequences," she said.

Anastasio commended **EPA** Administrator Andrew Wheeler's Oct. 30 memo urging agency regional offices to generally defer to state decisionmaking and enforcement chief Susan Bodine's Jan. 22, 2018 interim guidance calling for states to take the lead in enforcement cases.

While calling for deference, both memos note that **EPA** may intervene in certain circumstances.

Anastasio outlined a range of environmental topics where **EPA** has recently collaborated with state water regulators, describing some -- such as **EPA's** approval of novel Missouri criteria for reducing nutrient pollution -- as a good examples of the Trump administration's stated goal of advancing cooperative federalism.

But she reiterated states' criticism that **EPA** is moving too slowly in setting an enforceable standard, known as a maximum contaminant level (MCL), for per- and polyfluoroalkyl substances (PFAS) contamination.

"We need a strong federal **EPA** to establish national minimum standards so that there is a level playing field across the states," Anastasio said, backing criticism from several states that **EPA's** recently announced action plan fails to set a time frame for setting a limit for some PFAS.

"It's a complicated issue but [PFAS] is one place that **EPA** can really take the lead and help states out, instead of having states developing their own standards and leading to an uneven playing field," she said.

And she warned that the agency is failing to adequately consider state input in efforts to roll back an Obama-era rule for determining the scope of the CWA.

Anastasio said **EPA** should do a better job listening to state input on ongoing efforts to craft a narrower CWA jurisdiction rule. "This is one area where we would like a little more engagement and collaboration with the agency given how monumental an issue it is for us." 'Elevating the Conversation'

ACWA's support for **EPA's** improved collaboration with states comes roughly two years after the Environmental Council of the States (ECOS) issued its white paper, "Cooperative Federalism 2.0: A Deeper Look into a Rebooted **EPA**-State Relationship," that called for **EPA** limiting its scrutiny of state programs.

The ECOS document promised that any recasting of roles will result in "equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities."

The Trump administration has strongly embraced cooperative federalism, including backing greater state implementation of federal environmental laws in **EPA's** strategic plan.

But the Trump administration's commitment has been tested -- such as in an ongoing fight with California over the states' bid to retain its waiver for setting stricter standards for vehicle emissions.

During the webinar officials with **EPA**, ECOS, and ELI said states with delegated authority to implement federal law have long taken the lead in environmental oversight, noting that is contemplated in the CWA and other laws.

But they added such cooperation is especially important in a time of declining federal resources.

"The notion that states are going to step in and take over and **EPA** is going to step back and not do anything is not realistic," Sylvia Quast, general counsel for **EPA's** Region 9 told the webinar. "We all have to work together. We don't have unlimited resources here at **EPA**, and I don't see that changing any time soon."

While cooperative federalism is not new, Anastasio credited the Trump administration for "elevating the conversation" and memorializing its principles in memos.

But she called it "too soon" to determine whether the Trump administration steps to address PFAS contamination will prove an example of cooperative federalism working, saying that "**EPA** has been a little slow" in crafting an enforceable standard for certain PFAS, despite calls from many states.

Her remarks back recent disappointment from officials in **New Hampshire**, New Jersey, North Carolina and Pennsylvania that **EPA's** recently announced action plan for addressing PFAS chemicals does not move more quickly to craft an enforceable drinking water standard, known as a known as a maximum contaminant level

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(MCL), and does not set a specific time frame for developing the standard. States' Input

She also outlined several other areas of recent state and federal collaboration where states are waiting to see the results of their input and where they would have liked to have greater input.

For example, she said that states have been working with **EPA** on developing numeric nutrient criteria for lakes and reservoirs and provided input that states hope will lead to a more robust testing model.

And while she did not detail states' positions on the CWA jurisdiction rule, ACWA and the Association of State Wetland Managers recently raised concerns that the Trump administration's proposed rollback of the Obama-**EPA's** CWA jurisdiction rule could undermine states' long-standing push to assume authority to issue dredge-and-fill **permits** under section 404 of the water law.

And in a joint Feb. 14 letter, ECOS and ACWA requested that **EPA** and the U.S. Army Corps of Engineers extend for another 60 days an April 15 deadline for input on the Trump administration's pared-back version of the CWA jurisdiction rule.

Anastasio also said the Trump administration should expand its push for cooperative federalism to agencies other than **EPA**. She noted states' recent opposition to a Corps' plan to tighten state deadlines for conducting reviews of federally permitted pipelines and other projects under section 401 of the CWA.

States "would like to see other federal agencies wrapping their arms around the concept of cooperative federalism," Anastasio said, noting disagreement with the Corp and FERC states' 401 reviews.

"I would say we have not seen as much evidence of their commitment to working with state partners as we have at **EPA**." -- Dave Reynolds (dreynolds@iwpnews.com)

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## NEW MEXICO COURT PUSH MAY LIMIT IMPACT OF KEY SUIT ON STATE PFAS POWERS

**Inside EPA** | 03/07/2019

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Posted March 01, 2019

New Mexico officials are seeking to steer Defense Department litigation challenging their **permit** restrictions on per- and polyfluoroalkyl substances (PFAS) to state court, a move that if successful could limit any precedent the litigation may set on federal officials' ability to challenge such state actions.

New Mexico Environment Department (NMED) officials last month asked the U.S. District Court for the District of New Mexico to dismiss the case, United States v. NMED, saying a state court, rather than the federal district court, should hear the suit.

It called for the federal court to abstain from exercising its jurisdiction and to defer to the New Mexico Court of Appeals, where the Air Force has filed a concurrent appeal of the state Resource Conservation and Recovery Act (RCRA) **permit** at issue.



"Because there is an ongoing state court proceeding which implicates important interests and provides an adequate forum for Plaintiff's claims, this court should abstain from exercising federal jurisdiction," the motion says.

The Air Force has said it filed the concurrent appeal in state court merely "as a protective measure," but planned to seek to stay that case in deference to the federal case.

In the alternative, the state's motion asked for a "more definite statement of the alleged inconsistencies between the **permit**, RCRA and the [state Hazardous Waste Act (HWA)]."

The state's motion came after the Air Force in January sued NMED, arguing its hazardous waste definition in a recently renewed 10-year RCRA **permit** for Cannon Air Force Base should be vacated.

The state **permit** governs contamination investigation and remediation at the base, according to a fact sheet on the draft version of the **permit**. But the service charges the language, which defines hazardous waste as including contaminants such as PFAS, munitions constituents, perchlorate and other chemicals, "exceeds the scope of RCRA's waiver of sovereign immunity." While the service did not elaborate on why it believes the action is unlawful, it appears to stem from the fact that **EPA** does not regulate PFAS.

Marten Law policy adviser Nathan Frey and senior associate Jennifer Hammitt say in a Feb. 20 law post that the litigation may become a test case on attempts to limit state regulation on PFAS. The case "may provide additional insight into the viability of state regulation in the absence of federal rules."

**EPA** in a recently released PFAS action plan takes a multi-media approach to addressing widespread concern over PFAS contamination, promising to better monitor the extent of contamination and assess risks, but taking just preliminary regulatory steps on water and waste concerns.

Among **EPA**'s measures is a plan to list two specific PFAS as "hazardous substances" under the **Superfund** law – an action that would aid regulators and others in pursuing **cleanup** costs and could moot arguments the military has made in other disputes, where it has claimed it is immune from state enforcement of state laws for the release of anything other than listed **Superfund** hazardous substances.

But in the absence of **EPA** commitments, several states -- including New Jersey, **New Hampshire**, Colorado and New York -- are charging ahead and developing their own strict standards to address heightened public concerns over the spread of chemicals in drinking water systems. 'More Expeditious Solution'

Other states, like New Mexico, echoed concerns that any **EPA** action would take a long time but an NMED spokeswoman said the department will pursue whatever action it can to force the Air Force to remediate any releases in the absence of federal standards.

"In a state where PFAS is causing contamination and threatening human health today, it is critical we find a more expeditious solution in the interim. The Environment Department, in collaboration with other state agencies, will continue to use available avenues and resources to push the Air Force toward immediate action in addressing the contamination," she said.

And a spokesman for New Mexico Attorney General Hector Balderas (D) added that NMED "has the authority and the duty to protect New Mexicans, and we will vigorously defend that authority to ensure proper environmental protections for the people of New Mexico."

The **permit** challenge at Cannon came after the Air Force appeared to be dragging its feet on responding to alleged violations of state groundwater and surface water requirements at the base from PFAS used in aqueous film-forming firefighting foam for the past 40 years there.

In early December, NMED announced it was "requiring swift action" from Cannon to comply with state water requirements, contending that PFAS are at "very high concentrations" in groundwater on and off the base due to the use of firefighting foam. The state is seeking mitigation including water treatment of polluted well sources for livestock and irrigated crops and an evaluation of the feasibility of installing treatment systems on wells.

The state refused a request by the Air Force to extend the time for complying with the violation notice, because it failed to give sufficient justification, according to NMED.

Frey and Hammitt, of the Marten law firm, say that the Air Force's suit signals federal officials plan to aggressively challenge state efforts on PFAS in the absence of **EPA** standards.

"By seeking a declaratory judgment in advance of any enforcement action on the **permit**, the United States made

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its first official action in the courts to cut back on state enforcement of PFAS limits (at least as applied to federal entities)," they write.

But NMED's push to have the case decided by a state, rather than federal, court could limit the reach of any precedent.

While the state is seeking to dismiss the federal suit, it nevertheless argues that the federal lawsuit fails as a matter of law and fact because it does not allege "any specific inconsistencies between the **Permit**, RCRA, and the [New Mexico Hazardous Waste Act (HWA)]," and therefore should be dismissed.

"[I]t is impossible to ascertain from Plaintiff's Complaint which aspect of the hazardous waste definition in the **Permit** Plaintiff believes is problematic. In addition to its failures to meet the federal pleading standard, the Complaint as written provides no basis on which NMED may formulate a thoughtful and informed response," it says. If the court refuses to dismiss the complaint, it should call on the service to specify the alleged flaws in the **permit**, it says.

The **permit** being challenged is simply a renewal and revision of a past **permit** originally issued in 2003 that the Air Force did not challenge, it says. "Plaintiff does not allege that NMED failed to comply with its own administrative procedures in issuing its **permit**, nor does it allege that those procedures failed to fall within the express waiver of sovereign immunity," the state says.

"Rather it appears that Plaintiff simply disagrees with the outcome of those procedures and now seeks to collaterally attack the contents of a **permit** lawfully issued by NMED under its delegated authority."

On sovereign immunity, New Mexico says the Air Force's claim of sovereign immunity appears to entirely depend on its claim that the hazardous waste definition for purposes of corrective action is not consistent with New Mexico's HWA. But, NMED says, the state court of appeals "is expressly empowered to provide judicial review of final NMED permitting actions," so this issue fits "squarely within that court's competence to decide."

It adds, "Moreover, to the extent the federal sovereign immunity claim implicates any issue of federal law outside of the HWA, nothing in New Mexico law bars consideration of such a claim."

Further, on the "unsupported" claim that the **permit's** hazardous waste definition exceeds RCRA's sovereign immunity waiver, the state says the **permit** was issued under New Mexico's RCRA authority -- which was recognized by the Air Force when it entered into the previous **permit** for the base.

"Plaintiff has failed to articulate any reason why it should now be exempted from the RCRA waiver of immunity," it adds. "Therefore, the Complaint fails to state a claim on which relief may be granted." -- Suzanne Yohannan (syohannan@iwpnews.com)

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**EPA TOUTS 10-YEAR TRI CUTS TO BOLSTER ROLLBACKS DESPITE ANNUAL INCREASE**

**Inside EPA** | 03/07/2019

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Posted March 05, 2019

Top **EPA** officials touted just-released analysis of the Toxic Release Inventory (TRI), which show a decline in releases over 10 years, to renew arguments that such improvements show that the Trump administration's deregulatory efforts can be advanced without increasing risks, though the analysis showed an increase in total annual releases.

"The latest TRI analysis confirms that under President Trump the U.S. continues to improve its air quality while growing its economy," **EPA** Administrator Andrew Wheeler said in a March 5 statement.

**Alexandra Dunn**, **EPA's** recently confirmed toxics chief, delivered a similar message on a March 5 conference call with reporters. "The most recent TRI news give proof that economic growth and an improved environment can go hand in hand," she said.

The message is not a surprising one for **EPA** under the recently-confirmed Wheeler, who announced in his first address to **EPA** staff as acting administrator last year that one of his top priorities is improving **EPA's** risk communication.

He and other officials have sought to make the case that regulators need to better communicate the improvements in environmental quality -- and limited risks -- as a way to justify some of the agency's deregulatory efforts. Their efforts, however, have struggled in the face of public skepticism of the Trump administration's deregulatory efforts and top officials' past industry connections.

Wheeler and other officials' comments come as **EPA** March 5 unveiled its analysis of 2017 TRI reporting data which shows reduction in releases when measured over 10 years but an increase compared to the 2016 data.

Among other things, the analysis shows that TRI covered-facilities reported nearly 4,000 new projects that eliminate or reduce chemical waste; releases to air declined by 11 million pounds from 2016, dropping 57 percent from 2007 levels; and 87 percent of the 31 billion pounds of TRI-covered chemical waste "managed by facilities [in 2017 was] stopped from release by preferred waste management of recycling and treatment," Wheeler said.

Wheeler noted that during the last decade TRI releases have declined "while the U.S. economy has grown," and he highlighted as well a 6 percent drop in air releases of lead and a 9 percent drop in air releases of mercury between 2016 and 2017.

"The bottom line: the U.S. continues to make significant environmental progress. Some people think air quality is getting worse. We need your help to get this information to the public," Wheeler told reporters. "This information also demonstrates we can continue to clean the environment and grow the economy at the same time." Annual Increase

But the analysis, and some agency officials, acknowledged an increase in total releases compared to 2016. For example, the analysis states that from 2016 to 2017, "[t]otal releases to the environment increased by 13%, driven by the 21% increase (433 million pounds) in on-site land disposal."

The analysis shows the metal mining sector accounted for 50 percent of total 2017 releases, some 1.95 billion pounds, "which were primarily in the form of on-site land disposal." The chemicals sector was the second highest release sector for 2017, with 13 percent of total releases.

Of the total releases in 2017, eight chemicals comprised 76 percent of total releases, the analysis shows, with lead and zinc the top individual substances released. Lead represented 25 percent of the total, while zinc is 19 percent.

Some **EPA** regions acknowledged the increases. For example, **EPA** Region 5 said in a press release that although overall releases were up in the region by 7 percent for 2017, they are down by almost 40 percent from 2007.

"The increased releases in Region 5 during 2017 are due to increased off-site transfers of waste for disposal and on-site land disposal. The increased releases are primarily due to increases from the hazardous waste sector," the region said.

Wheeler and other officials largely sidestepped the increase. They also argued that context is important when considering TRI data, which is just one source of information about chemicals.

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"It's important to note that just because there is a chemical release, it doesn't mean there is a risk. Information must be presented in context," Wheeler said.

Asked what changes **EPA** is making to try to better provide context around TRI data, Wheeler replied, "The TRI release data is just that. Hopefully for the most part releases are fully permitted and within permitted limits. That's why it doesn't necessarily mean a negative for health effects."

Wheeler added that TRI "is not an exposure tracking system. What's important is, where anybody lives, they can go online and see the facilities in their communities and what they are releasing."

Like Wheeler, Dunn noted during a second March 5 conference call with Region 5 **Regional Administrator** Cathy Stepp that "just because there is a chemical release does not mean there is a human health risk. TRI information must be presented in context. It must be paired with the health effect in question and whether the health effect is likely to present a risk." Fenceline Communities

Asked how **EPA** might discuss this context with fenceline communities, those closest to facilities and exposed to their emissions, such as the town of Willowbrook, IL, where residents are concerned about ethylene oxide releases from a Sterigenics medical sterilization facility, Dunn replied, "TRI is one source of data. . . . The emissions that are reported have to be paired with information about the hazard of the chemical as well as the nature of exposure. When you talk about fenceline communities, that would be a piece of information. They might want to seek information from the facility about those emissions. This data is reported by facilities to **EPA**, they are aware of the information and should be able to answer followup questions from the community."

She did not comment on a recent report that the company dropped its past voluntary practice of reporting its TRI releases, providing no 2017 release information.

A Sterigenics spokeswoman previously told Inside **EPA** the company is not required to file TRI reports for its facilities but did not explain why. She added that "Sterigenics . . . like many other companies, made a business decision to no longer voluntarily file TRI reports." — Maria Hegstad (mhegstad@iwpnews.com)

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## **EPA TOUTS ENFORCEMENT DEFERENCE POLICY BUT ALSO EYES STATE 'ASSISTS'**

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Posted February 28, 2019

A year after issuing interim guidance that mandates "deference" to states in environmental enforcement, top EPA officials are touting the Trump administration's success in shifting enforcement action to the states, though they are weighing changes to the guidance even as Democrats and environmentalists continue to attack the strategy.

In her testimony at a Feb. 26 hearing of the House Energy & Commerce Committee's environment panel, EPA enforcement chief Susan Bodine said her practice of deferring to states' discretion on enforcement actions, set out in a memo to staff in January 2018, has not stopped the agency from putting pressure on states to step up their work when deficiencies arise.

"We have two examples where we've leaned heavily on states to take action and they have. . . . But then, at the end of the day the state finally did take the action, we didn't have to, and all that work doesn't show up on our results," Bodine said in her opening statement to the panel.

Under Bodine's 2018 interim guidance, "EPA will generally defer to authorized States as the primary day-to-day implementer of their authorized/delegated programs, except in specific situations." Those situations include, among others, a need, documented in program audits, for EPA to "fill a gap" in a deficient program; significant noncompliance that a state has not "timely or appropriately" addressed; and any circumstance demands EPA's resources or expertise.

Bodine said during the Feb. 26 hearing that formalizing the deference policy has bolstered relationships between EPA and state enforcement personnel, with benefits to joint inspections and other on-the-ground work as well as expanding federal training for state employees.

But she also suggested the policy may not allow EPA staff to get credit for work they do in assisting state-led enforcement actions.

"If we take a joint inspection in an authorized program of a state, it may be that the state takes the formal enforcement action, and not EPA. We call those 'state assists.' But we're getting compliance. We're also developing new measures to capture those efforts, because I want the staff to get credit for all of the work they're doing," Bodine said.

The note that "state assists" do not appear on EPA's formal statistics was part of her defense of EPA's fiscal year 2018 enforcement figures, which largely declined from prior years — including some that reached historic lows, such as civil penalties for environmental violations.

Bodine did not elaborate on the circumstances that led EPA to "lean" on states' enforcement programs, and EPA did not respond to a request to expand on her comments.

While the "interim" guide has been EPA's most formal policy on that deference for over a year, a long-promised update to the policy appears to be taking shape, according to EPA Region 9 General Counsel Sylvia Quast. Final Version

During a Feb. 28 Environmental Law Institute (ELI) webinar on cooperative federalism, Quast said agency officials are actively working toward a final version of the memo.

"We're in the middle of evaluating that interim guidance and seeing does it need to be modified. . . . We had a call yesterday where regional counsels talked about our experience implementing the interim guidance," Quast said.

But she added that the updated policy, whenever it debuts, is unlikely to work dramatic changes to the Trump EPA's practices so far.

Officials are "thinking about not changing that dramatically; just a reupping of our commitment to working with states. We have to because that is the resource situation we're in and that's the structure of environmental laws in the first place," Quast said.

She also touted the benefits of the memo, saying it acknowledged and formalized a long-running practice between EPA and states.

"To me the notion that this is a new and dramatic and different change doesn't really conform to the reality of how we have been living in the environmental sector . . . The states have been doing the vast majority of environmental regulation and enforcement for many, many years now," Quast said.

"The notion that other states are going to step in, take over, and EPA is going to step back and not do anything is not realistic."

State representatives on the webinar also defended Bodine's memo. Julia Anastasio, executive director and general counsel for the Association of Clean Water Administrators that represents state water regulators, downplayed claims that the 2018 memo represented EPA withdrawing from its enforcement duties.

And Anastasio said the memo merely "institutionalizes" long-standing practices for EPA's work with delegated states. She added that in many cases states prefer to work with EPA rather than alone, as long as that work is cooperative. "Entities need national partners for national minimum standards . . . because cooperative federalism

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is in fact messy," she said. 'Violations Just Sit'

But Democrats and environmentalists are keeping up their attacks on Bodine's deference policy, including at the Feb. 26 hearing where they said EPA is letting active violations "sit" without action from either state or federal regulators.

"There are certain responsibilities that you can't just push off to states, and I think that's letting a lot of these violations just sit," Eric Schaeffer, executive director of **Environmental Integrity Project** and a former top EPA enforcement official under the Clinton and George W. Bush administrations, said in response to a question from the subcommittee's vice chair Joseph Kennedy III (D-MA) on whether states are filling gaps left by the deference policy.

Speaking to Inside EPA after the hearing, Bakeyah Nelson, executive director of Air Alliance Houston, said the Trump EPA, both before and after Bodine's memo, has stood behind decisions by the Texas Council on Environmental Quality not to enforce against facilities that released toxic chemicals during the massive floods caused by Hurricane Harvey in 2017, and to impose what she called inadequate fines on other violators.

"I think that we live in a state where we know that they're not penalizing . . . if the penalty is not strong enough, there's no profit incentive to comply. There's enforcement there but no teeth behind it," she said.

And Schaeffer in a separate interview with Inside EPA named the ongoing controversy over chloroprene releases from the Denka Performance Elastomers plant in LaPlace, LA, as an example of one such violation.

"To bring what states are doing into the conversation, that makes sense. What I'm going to keep doing with them is I'm going to take these big, dirty cases and keep dropping them on them, and say 'what does cooperative federalism mean here? What's the outcome? That's what people care about,'" Schaeffer said. -- David LaRoss (dlaross@iwpnews.com) & Dave Reynolds (dreynolds@iwpnews.com)

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## HIGH COURT DENIES REVIEW OF CHALLENGE TO EPA 'VETO' OF CWA 404 PERMITS

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Posted March 04, 2019

The Supreme Court has rejected a petition that sought judicial review of **EPA's** "objections" to proposed Clean Water Act (CWA) dredge-and-fill permits, letting stand an appeals court's decision that requires applicants to instead wait until a formal agency approval or denial before challenging the permitting process.

In March 4 orders, the high court denied review without comment in *Marquette County Road Commission v. EPA*, which sought to overturn the agency's objection to a CWA section 404 permit crafted by Michigan that led to the Army Corps of Engineers taking over the process of crafting a final permit.

The commission argued in briefs that **EPA's** action was effectively a "veto" of the state-crafted permit that forced it to file a new application from scratch with the Corps, but a unanimous panel of the U.S. Court of Appeals for the 6th Circuit disagreed. Instead, they held that the objection was merely part of a continuous permit process

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established by the CWA.

"In the absence of any decision from either agency to ultimately deny or grant the permit . . . we have nothing to review," Chief Circuit Judge Alice M. Batchelder wrote.

Under the CWA, **EPA** can file objections to any state-crafted water permit if it feels that the proposal would not adequately protect the environment or is otherwise legally flawed. If it cannot resolve the objection in negotiations with the state it can then "federalize" the permit, which shifts authority to **EPA** itself for a National Pollution Discharge Elimination System permit or to the Corps for a dredge-and-fill permit crafted under section 404 of the law.

Marquette insisted in its filings that when **EPA** hands authority over a contested to the Corps it represents "final agency action" reviewable under the Administrative Procedure Act. But the government countered that as long as any agency is still working on the process no "final" action has occurred.

Had the high court taken the case it would have opened the door for immediate challenges to objections under section 404. **EPA** rarely uses that authority because only Michigan and New Jersey have delegated dredge-and-fill permit authority at all, while permits in the other 48 states are crafted by the Corps no matter what.

But states and the Trump administration are pushing to broaden the delegation of section 404 permit powers, which in turn would tee up more frequent objections by **EPA** as the volume of state-crafted dredge-and-fill permits rises.

The fate of that push is still uncertain, however -- especially after state officials raised fears that the joint **EPA**-Corps proposal to narrow the universe of wetlands and other waterbodies subject to the CWA will make assumption of the section 404 program irrelevant, since many of the waters subject to dredge-and-fill permit protections would be excluded from the law entirely under the current proposal.

"For some states they look at the proposed definition of waters of the U.S., and it excludes virtually all the waters in their state, which would mean there's really nothing to assume, and there would be no federal program in the state because there are no jurisdictional waters," Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators which represents state and interstate water programs, told *Inside EPA* recently. -- David LaRoss (dlaross@iwpnews.com)

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## SENATE ENERGY PANEL SEEKS TO SPUR 'PRAGMATIC' CLIMATE POLICY DISCUSSIONS

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Posted March 05, 2019

A Senate energy committee hearing on the power sector and climate change -- billed as the chamber's first hearing to explicitly address the issue in five years -- focused largely on low-carbon technology and incentives to reduce carbon emissions, omitting some of the highly partisan fights over climate policy that have gained steam in recent months.

"Clearly the effort here is to get a bipartisan conversation going," said Energy and Natural Resources (ENR) Committee Chairwoman Lisa Murkowski (R-AK). "The rhetoric surrounding the issue of climate and climate change can be so heated and animated, and so oftentimes just a very toxic discussion that you cannot get to focusing on the solutions, on where we're going in a positive way."

The March 5 hearing was the Senate's first to directly address climate change since 2012, though ENR hosted a proceeding in early February on "energy innovation" that included significant discussion of low-carbon technology and acted as a de facto climate hearing.

While senators and witnesses at the recent hearing praised the "robust" and "serious" discussion on the power sector's low-carbon transition, the event nonetheless showcased the limits of the current political environment on climate policy.

For example, only two Republicans besides Murkowski participated in the discussion – with Sen. Cory Gardner (R-CO) praising energy savings performance contracts and tax incentives for carbon capture and advanced nuclear technologies, and Sen. Bill Cassidy (R-LA) largely arguing that states with more ambitious carbon policy face higher electricity prices.

That dynamic underscores that Murkowski is one of the few in the GOP caucus willing to engage publicly on climate mitigation policy, with most Republicans largely opposed to carbon controls or seeking to sidestep the issue.

Additionally, witness Joseph Kelliher of the power generator NextEra Energy, noted at one point that debating the benefits and drawbacks of various types of climate legislation "assumes there's some consensus on carbon policy."

Left unsaid in his testimony is that Congress is far from achieving such a consensus on the need to cut greenhouse gas emissions to address climate change.

Nevertheless, Murkowski and committee ranking member Joe Manchin (D-WV) promoted a "reasonable" and "pragmatic" policy that relies largely on developing low-carbon technologies and providing incentives for their deployment – while eschewing "mandates" to reduce emissions.

Manchin, who has long supported coal and other fossil fuels and opposed Obama **EPA** GHG rules, said that any climate legislation must address the threats fossil-dependent states face from a shift to low-carbon energy.

Such a bill "must offer states like West Virginia opportunities, not additional economic burdens," he said, adding that it should "ensure our citizens have a role in the clean energy future."

He also urged environmentalists to accept the "reality" that "fossil fuels aren't going anywhere anytime soon," particularly in developing countries, and that the United States should thus develop carbon capture and other technologies to control emissions from those sources.

Murkowski focused at length on climate-related damages that are occurring in her home state, including a significant loss of sea ice and permafrost, as well as efforts to deploy low-carbon micro grids to help address reliability and cost issues in the state's rural areas.

"In Alaska, we view there is no choice here" but to begin addressing climate change, she said. Incentives & Mandates

Many witnesses broadly embraced her view that "incentives" to reduce emissions are preferable to "mandates," though that notion faced occasional pushback.

Kenneth Medlock of Rice University's Center for Energy Studies, for instance, said lawmakers should be "open to disincentives" such as "pricing mechanisms" that discourage higher-carbon resources.

"If you're trying to alter the economic landscape, typically one of the best ways to do that is through pricing mechanisms, and tax is actually a viable approach," he said, offering implicit support for a carbon tax.

Additionally, Lisa Jacobson, president of the Business Council for Sustainable Energy, testified that Congress in the future could consider "market-based mechanisms to address carbon emissions" such as cap-and-trade programs.

She later added that "what's key is building bipartisan, durable policies that the market can invest on." If a policy causes significant "economic harm, it's going to be rejected over time."



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Jacobson -- whose group includes natural gas, renewables and energy efficiency firms -- added that the hearing represented a "refreshed, robust, serious conversation" on climate change, and that Congress could start with a broad consensus on research and development for low-carbon technology, "and maybe build out from there." Green New Deal

Another issue that was largely missing from the ENR hearing was discussion of the Green New Deal (GND) climate resolution that has consumed the climate debate in Congress over the past several months -- with Republicans seeking to paint the plan as extreme in often exaggerated terms.

Cassidy mentioned the GND once in passing as part of a broader point on the economic risks of carbon mitigation efforts, and Manchin offered indirect pushback to the plan's call to achieve a carbon-free power system within the next decade, arguing that is not "possible."

But both Murkowski and Manchin pledged a continued focus on climate policy. "I do think this is one of the exciting areas where we can truly make a difference for our nation's economy, for our nation's environment and really for our nation's health," Murkowski said.

Manchin added that the hearing is "is just the beginning. It's not the ending, one and done." -- Lee Logan (llogan@iwpress.com)

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## **WATER SECTOR'S REPORT COULD BOOST EPA BID TO CONSOLIDATE SMALL UTILITIES**

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Posted March 05, 2019

A coalition of wastewater and drinking water utilities in a new report is recommending steps to encourage the consolidation of small utilities, which could boost **EPA's** bid for increased collaboration among utilities and help shape the agency's response to a statutory mandate for crafting rules on when states can mandate consolidation.

The coalition known as the US Water Alliance released its report, Utility Strengthening through Consolidation: A Briefing Paper, in late February. It outlines guiding principles for consolidation, starting with the need for proactive, community-driven approaches, in order to be sensitive to local concerns, while emphasizing the ability of consolidation to enable utilities to address unfunded investment gaps and support better operational resilience, among other benefits.

But it acknowledges that states may need to step in and require consolidation if communities and their water systems face challenges that place public health or the environment at significant risk.

The alliance's membership includes a host of individual water utilities, groups representing different aspects of the water sector, private water companies, environmental groups and labor unions.

The report follows a 2018 white paper from the alliance calling for **EPA** policies to promote regionalization and

provide regulatory flexibility to encourage partnerships.

Andrew Sawyers, director of **EPA's** Office of Wastewater Management, said last year that among agency water chief David Ross' priorities was reducing the number of drinking water and wastewater systems through partnerships, collaboration and alliances.

"It's not that simple" to combine utilities, "but it's absolutely necessary" to look at streamlining, Sawyers said, adding that there is a need to examine both structural and operational changes.

There are more than 51,000 community water systems and nearly 15,000 wastewater treatment plants. More than 80 percent of water systems serve fewer than 3,330 people, and 55 percent serve fewer than 500.

And **EPA's** Inspector General has identified a wide array of challenges facing small drinking water systems — that serve 3,300 or fewer customers — in providing safe, reliable and affordable drinking water to their customers, factors that could bolster the case for consolidation.

These challenges include adapting to new regulatory standards, the need to upgrade or replace aging infrastructure, source water availability and protection issues, and increasing budgetary constraints.

Calls for consolidation of drinking water and wastewater utilities date back to at least 2003 when the majority of **EPA's** National Drinking Water Advisory Council supported reducing utility costs and facilitating compliance through consolidation. While the National Rural Water Association objected to some of the recommendations in the 2003 report, the organization is supporting the alliance's report, which grew out of stakeholder discussions last year.

Additionally, last year's America's Water Infrastructure Act directed **EPA** by the end of 2020 to promulgate regulations that would give states greater authority to require utility consolidation.

Specifically, the law says states may require the owner or operator of a public water system to assess options for consolidation or transfer of ownership of the system if the system has repeatedly violated national primary drinking water regulations in ways that are likely to adversely affect human health and is unable or unwilling to come into compliance, and the consolidation or transfer could result in greater compliance. Coalition's Recommendations

The report echoes this language, saying, "Consolidation, technical assistance, funding, and other support — individually or combined — all need to be on the table to ensure communities are provided with reliable access to clean and safe water services. If communities are in this challenged context but encounter resistance or reluctance to solve the challenge, state authority to require consolidation becomes a critical option, and may ensure sustainable local water services, protection of public health, and environmental well-being."

Other guiding principles include presenting consolidation in the context of the value it can provide the community, exploring a range of consolidation models, and having states adopt a complete and cohesive authorizing environment to streamline consolidation transactions and lower up-front transaction costs,

The alliance notes there are a range of actions to achieve greater scale in the water sector, starting with agreements and contracts on one side of the spectrum and full consolidation on the other. In between are options such as partnerships, franchising and regionalization where to various degrees management, governance, operations and financial functions are consolidated without resulting in a single legal entity.

And even with total consolidation, there are three primary approaches, the report says. Direct acquisition is where a higher-capacity utility acquires the assets, operations, and customers of another system and absorbs them into its existing governance, operational and financial frameworks.

A joint merger is where two or more relatively equal partners both adjust governance, operations, and financial frameworks to create an entity that is owned and controlled by the previously separate parties — for example, through consolidating assets and giving governing authority to a merged board of directors.

A balanced merger is where two or more entities consolidate with the goal of establishing a governance structure that provides a basis for at least some direct participation by the pre-existing utility in future decision-making. However, equal representation of all parties may not be an objective or even feasible. This is a common approach when many lower-capacity systems consolidate with one higher capacity system, the report says.

After discussing the financial and managerial benefits of consolidation, as well as the financial and cultural barriers to consolidation, the report makes several recommendations for those trying to accelerate utility consolidation. These include building the evidence base, creating a supportive regulatory and policy

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environment, increasing financial support, and supporting capacity building and knowledge transfer. States' Role

The alliance also says all levels of government have a role to play in creating an enabling policy environment for utility consolidation, with state governments playing an especially important role. "Comprehensive state frameworks should facilitate and encourage communities to customize consolidation agreements. States may require systems to consider consolidation, and others require it in certain cases," the report says.

Specifically, states should develop clear procedures for how to initiate and complete consolidations relative to each major institutional governance model in state statute and regulation; define water utility valuation methods to calculate the fair market value of system assets; remove obstacles such as service area restrictions, right to serve restrictions and rights of first refusal; clarify and limit liability exposure; and establish the ability to order consolidation as a backstop to address significant noncompliance.

All levels of government should provide financial incentives to encourage system to consolidate, including prioritizing state revolving funds (SRF) for consolidation projects and offering priority points when evaluating applications for SRF money; requiring SRF applicants to assess consolidation and whether it would result in cost savings or significant health benefits for customers; and subsidizing consolidation through principle forgiveness, grants, and interest rate reduction. — Lara Beaven (lbeaven@iwpnews.com)

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## ESCALATING CONTROVERSY, MCCOLLUM SEEKS EPA REGION 5 PERMIT COMMENTS

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Posted February 27, 2019

Rep. Betty McCollum (D-MN), chair of the appropriations subcommittee that oversees **EPA's** budget, is urging the agency to release Region 5 staffers' comments criticizing a Minnesota mine permit that political leaders allegedly suppressed, escalating a controversy that has already prompted calls for an Inspector General (IG) review.

"In the interests of transparency and maintaining the public's trust, I am requesting that you make available to the public a copy of any written comments or concerns prepared by **EPA** staff regarding the Northmet mine permits," writes McCollum in a Feb. 25 letter to Acting **EPA** Administrator Andrew Wheeler, referring to the permit that Minnesota drafted under delegated Clean Water Act (CWA) authority and that Region 5 reviewed.

**EPA** has begun to test its new approach for federal reviews of state-crafted permits, and critics of Region 5 — which includes Minnesota — suggest its political officials suppressed staff comments faulting the mine permit.

A former **EPA** lawyer and a local tribe have raised concerns that political officials suppressed Region 5 staff's written comments and urged the IG to investigate. Separately, a union representing many public employees has also filed a Freedom of Information Act (FOIA) lawsuit seeking the alleged staff comments.

McCollum adds to the criticism by saying failure to publicly release the comments **EPA** staff prepared on the Minnesota Pollution Control Agency's (MPCA) CWA National Permit Discharge Elimination System (NPDES) permit for a PolyMet Copper-Nickel mine near Lake Superior runs counter to Wheeler's directive from late 2018

to boost transparency issued in the wake of his predecessor Scott Pruitt's departure.

"[L]ast November you sent a memo to **EPA** staff reaffirming your commitment to agency transparency and reminding staff of their long-standing obligations under the Federal Records Act to create written documentation for 'all substantive decisions reached orally,'" McCollum says.

McCollum's letter hints at others' allegations that Region 5 staff read criticism of a draft water permit for the mine to state officials over the phone rather than providing written comment the public might more easily access.

McCollum's request for documents from the Region 5 review of the MPCA permit build on growing criticism that suggests the mine's permit is becoming a test case for the Trump administration's agency-wide effort to streamline regional reviews of state permitting and other programs implementing federally delegated environmental law.

The alleged failure to provide written comments on a NPDES permit for the mine comes as **EPA** has recently piloted its new framework for reviewing state permits in several regions and on reviews of the Title V air permitting program and on real-time review of state-issued NPDES permits.

In a meeting last March with **EPA** Chief of Operations Henry Darwin, chief author of the plan for streamlining federal reviews of state programs, state regulators requested that **EPA** focus any new process on regions' reviews of states' NPDES permits and targeted Region 5 as an example of why a streamlined policy is needed.

During the March 22 closed-door session of the Environmental Council of the States (ECOS) 2018 Spring Meeting in St. Paul, MN, some state regulators cited Region 5 as a region that conducts in-depth reviews of permitting and other decisions rather than merely assessing whether a state's permit is adequate to meet federal standards.

A former state regulator told Inside **EPA** soon after the meeting that "historically, Region 5 states say Region 5 is way down [in] the details of what they do every day."

Some state officials also noted that Region 5, which spans Minnesota, Wisconsin, Illinois, Indiana, Ohio, and Michigan, has more staff than some other regions, and suggested that scaling back the region's staff could help limit its scrutiny of state actions and ensure consistency with other regions. 'Last Option'

Wheeler memorialized Darwin's plans for streamlined reviews in an Oct. 30 memo to regional officials, "Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes."

The memo generally calls for **EPA** to defer to state decision-making in most cases but also lays out situations when regulators should intervene to protect human health and the environment.

"States and tribes have the primary role in state- and tribal-implemented federal programs, and the **EPA** will generally defer to states and tribes in their day-to-day activities," Wheeler says describing the first of four principles that will guide regions' review of state programs.

"Withdrawal of program implementation authority is a last option to be considered after all other options have been exhausted or when human health and the environment are at risk," the memo adds.

But the status of the **EPA** regions' implementation of the policy for streamlined reviews is unclear.

In a Feb. 6 interview focused on Darwin's wide-ranging effort to bolster efficiency at **EPA**, through changes such as regional reorganization, creating more efficient processes through LEAN business techniques, and streamlining regional reviews of state programs, Darwin said he was not currently up on the status of the agency's piloting of the new framework for faster reviews.

He said that he is in discussions with regional officials who conduct the reviews on continuing to develop a framework for improving **EPA's** oversight of state programs. He said **EPA** is trying to develop a system for determining the number of permits regional staff would audit, and added that the depth of any audit would likely vary depending on the type of permit being reviewed and a state's history in effectively issuing those permits.

"We have been talking to the offices that do these reviews [about] how could we establish a system -- that is consistent -- but that we decide on a state-by-state basis -- which permits warrant review based on past experiences," he said. 'A Larger Pattern'

In her letter, McCollum reiterates concerns raised by a retired **EPA** water attorney, a Minnesota environmental

group and the Fond du Lac Band of Lake Superior Chippewa that Region 5 staff had "serious reservations" that MPCA's January 2018 NPDES permit was inadequate and so prepared written comments but never forwarded the written comments to state regulators.

McCollum says that such a process would give the public little knowledge of **EPA** staff's concerns and whether the state adequately addressed those concerns prior to issuing the final NPDES permit in December 2018.

In a nod to claims in requests to the IG and the Public Employees for Environmental Responsibility Feb. 19 FOIA lawsuit claiming that Region 5 staff last April read comments to MPCA over the phone, McCollum says, "To the extent that the substance of written comments were ultimately shared with the MPCA verbally, I ask that the written comments be annotated to indicate which concerns were shared verbally."

**EPA**'s IG is currently weighing requests from retired **EPA** attorney Jeffry Fowley and the Fond du Lac Band to investigate the Region 5 review of MPCA's permit for the mine.

While McCollum targets Wheeler's transparency pledges that have earned him bipartisan praise as his nomination to remain at the helm of the agency is pending, the requests for an IG investigation suggest that allegations of an inadequate regional review of the PolyMet mine permit may reflect broader shortcomings in **EPA**'s review of state programs.

The Fond du Lac Band in its Feb. 5 request for an IG investigation raises "serious concerns" that "irregularities" in Region 5's review of the MPCA permit for the mine could hinder future reviews the region conducts.

The Band cites as an example **EPA**'s role in a pending PolyMet application to the U.S. Army Corps of Engineers for a Clean Water Act section 404 and dredge-and-fill permit for the mine.

"[F]ailure to provide (for the record) such comments appears to violate legal and certainly ethical requirements and, sadly, appears to be part of a larger pattern by Region V to suppress staff comments on other MPCA permitting actions as well," the Band says. "If true, this confirms that **EPA** is not carrying out its basic responsibilities, including effective oversight of delegated state regulatory actions."

And while Wheeler's Oct. 30 memo on regions' reviews allows for situations when **EPA** might intercede if state permitting is deemed inadequate, Fowley says in a Feb. 1 supplement to his initial request for an IG investigation that the Trump administration appears unlikely to take that step even when circumstances warrant it.

"I think your office also should investigate the failure of the current administration to support making formal objections and taking over permit issuance when necessary, to prevent state permits being issued which violate minimum federal requirements," Fowley says in the addendum.

"My understanding is that no such formal objections and assumptions of federal responsibility have occurred during this administration in the water program in Region V or any other Region." -- Dave Reynolds (dreynolds@iwpnews.com)

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**DISTRICT JUDGE FINDS EPA LIABILITY UNDER SUPERFUND FOR GOLD KING MINE SPILL**

Posted March 01, 2019

A federal district judge has ruled that **EPA** faces liability under the Superfund law for its accidental massive wastewater spill from the Gold King Mine cleanup in 2015, backing state and private plaintiffs' claims that federal cleanup projects like the mine can be subject to the statute's application to waste "operators," "arrangers," and "transporters."

In a Feb. 28 opinion, Chief Judge William P. Johnson of the U.S. District Court for the District of New Mexico largely rejects **EPA's** motions for dismissal in the consolidated suit over the Gold King spill. The decision means plaintiffs will be able to pursue their claims against the agency not only under the Superfund law, but also the Clean Water Act (CWA), Resource Conservation & Recovery Act (RCRA) and Federal Tort Claims Act (FTCA).

That means the next phase of litigation will focus on establishing exactly what went wrong during the Obama **EPA's** attempted cleanup of the former Gold King gold mine in San Juan County, CO, that triggered the release of 3 million gallons of contaminated wastewater that had built up under pressure inside the closed mineshaft.

**EPA** argued in briefs that the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Superfund law, should never penalize federal authorities for the effects of a cleanup project or other response actions to pre-existing contamination.

But Johnson rejects that claim and says appeals courts have consistently held that the law does not waive sovereign immunity for the effects of cleanup work.

"Three circuit courts have rejected the proposition that [CERCLA] does not waive . . . sovereign immunity 'for response actions when such actions are **EPA's** sole connection to the site,'" Johnson writes, noting that the relevant sections of the law impose mandates on "persons" who release hazardous waste without exceptions for the government.

Quoting from *FMC Corp. v. U.S. Department of Commerce* (DOC), a 1994 en banc decision from the U.S. Court of Appeals for the 3rd Circuit where the court split 9-3, Johnson writes, "the government can be liable when it engages in regulatory activities extensive enough to make it an operator of a facility or an arranger of the disposal of hazardous wastes even though no private party could engage in the regulatory activities at issue."

In addition to FMC, Johnson cites *U.S. v. Shell Oil Co.*, a unanimous 2002 9th Circuit panel decision, and *East Bay Municipal Utility District v. DOC*, decided by a unanimous panel of the District of Columbia Circuit in 1997.

New Mexico courts fall under the 10th Circuit, meaning none of those cases are binding on Johnson, but his opinion adopts their logic as a good fit with both the text of CERCLA and broader Supreme Court decisions on the nature of liability under the law.

Following on those principles, Johnson agrees with plaintiffs in the consolidated cases, including the states of Utah and New Mexico as well as the Navajo Nation and individual plaintiffs, that depending on the facts of the case **EPA's** behavior at Gold King could meet CERCLA's tests for an "arranger," "operator" or "transporter" of hazardous waste.

Plaintiffs in the case say **EPA** officials and on-site contractors ignored their established plans for the cleanup and drilled into the mine prematurely, and are thus subject to statutory penalties for a "negligent" release of hazardous waste. **Liability Tests**

Specifically, Johnson writes that the plaintiffs' CERCLA claims are valid because the alleged facts would, if proven, meet the law's tests for liability in three categories.

On **EPA's** role as a "transporter," he writes, the complaints "state claims for transporter liability because they allege that **EPA** took steps to drain the mine and treat the water at the site."

Addressing the "arranger" claims, Johnson writes, the plaintiffs' filings "state claims for arranger liability because they allege that **EPA** took intentional steps to dispose of a hazardous substance."

And on the "operator" test, he writes that the complaints "state claims for operator liability because they allege that **EPA** managed, directed, or conducted operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental

regulations."

Johnson also rejects **EPA's** motions to dismiss RCRA, CWA and FTCA claims seeking either monetary damages or new mandates to clean up damage from the spill, but the Feb. 28 opinion does not explicitly back the plaintiffs' legal arguments in those areas. Rather, it says that there are still disputes as to the underlying facts, meaning any dismissal would be premature.

"The Court denies the Federal Defendants' Motion to dismiss the Sovereign Plaintiffs' CWA and RCRA claims for lack of subject-matter jurisdiction because the Federal Defendants have factually challenged Plaintiffs' assertion of subject-matter jurisdiction . . . using facts that are disputed by the Sovereign Plaintiffs," the decision says.

Specifically, it notes that Utah says **EPA's** cleanup plan for the Gold King area -- formally designated the Bonita Peak Mining District on the National Priorities List of high-priority response actions -- "does not provide for any remedial action in the State of Utah." That conflicts with the agency's claim that the precise borders of the district are subject to change "based on investigations regarding the extent of the release and the risks posed by the release," which would make it impossible to say for sure that there will be no cleanup in Utah.

Similarly, Johnson is ordering more fact-finding to investigate whether **EPA's** work at Gold King falls under FTCA's exception for "discretionary functions." All sides in the case have clashed over whether the cleanup plan was mandatory for **EPA**, which would mean damages from its fallout can be recovered through FTCA, or subject to officials' discretion and thus outside the statute's reach.

Also still outstanding are dismissal motions filed by numerous private defendants including mining companies that formerly owned the Gold King site and contractors that worked under **EPA** on the cleanup. -- David LaRoss (dlaross@iwpnews.com)

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## GORSUCH CLAIM ON DEFERENCE'S DECLINE RAISES STAKES FOR EPA'S DISCRETION

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Posted March 05, 2019

Supreme Court Justice Neil Gorsuch in a new dissent claims there is "mounting criticism" of the Chevron principle that gives primacy to **EPA** and other agencies' interpretations of unclear laws, raising the stakes for pending cases that could give the court's strengthened conservative majority an opening to narrow or scrap the doctrine.

Gorsuch, well-known as an opponent of deference principles, released a dissenting opinion to the March 4 decision *BNSF Railroad Co. v. Loos* that one observer has already said effectively "dances on Chevron's grave" -- even though support for an outright repeal of the precedent by the nine-member high court still appears slim.

While *BNSF* and other pending cases testing Chevron do not involve **EPA** as a legal party, any ruling by the justices to reduce or undo the doctrine would have major implications for the agency's rulemaking discretion.

In his dissent to the 7-2 *BNSF* ruling, which deals with the meaning of the Railroad Retirement Tax Act (RTA),

Gorsuch points out that even though the case deals with an unclear provision of the law Chevron was absent from the parties' briefs and Justice Ruth Bader Ginsburg's majority opinion that part of a \$126,000 award that a BNSF employee received due to an on-the-job injury was considered taxable "compensation" under the RRTA.

"In the past, the briefs and oral argument in this case likely would have centered on whether we should defer to the IRS's administrative interpretation of the RRTA. . . . But nothing like that happened here. BNSF devoted scarcely any of its briefing to Chevron. At oral argument, BNSF's lawyer didn't even mention the case until the final seconds -- and even then 'hate[d] to cite' it. No doubt, BNSF proceeded this way well aware of the mounting criticism of Chevron deference," Gorsuch writes in his dissent, joined by Justice Clarence Thomas.

Chevron, based on a landmark 1982 high court decision, requires judges to defer to agencies' "reasonable" interpretations of unclear statutory language. The doctrine has been decisive in litigation over a lengthy list of high-profile **EPA** rules, and will be key to the Trump **EPA**'s chances of defending its deregulatory agenda in court, as efforts such as its attempt to pare back the scope of the Clean Water Act and to undo a Clean Air Act climate rule for power plants, because they rely on the agency's interpretation of the water and air laws.

But Chevron has fallen out of favor with many conservatives, both in Congress and on the bench.

Republicans introduced bills in the last Congress to repeal the doctrine, although they failed to reach the 60 votes needed to overcome Senate filibusters.

The Supreme Court has avoided taking up cases over whether to overturn or limit Chevron through a new ruling, although it is considering whether to scrap the related doctrine of Auer deference, which applies to agencies' readings of their own rules as opposed to statutes.

The Auer challenge, known as, *Kisor v. Wilkie*, has already emerged as a test case for the justices' position on deference generally and its stature is only likely to grow as it approaches oral argument on March 27. Sen. Sheldon Whitehouse (D-RI) on March 4 filed an amicus brief where he casts that case as part of "a sustained effort" to weaken **EPA** and other agencies that has been brought by industry, conservative groups and other "influencers."

"This case comes before the Court as part of a larger strategy to disable public interest regulation, as a 'stalking horse for much larger game.' It must be seen in the larger context of the age-old contest between powerful influencers who seek to bend government to their will, and a general public that counts on government to protect it from the influencers," Whitehouse's brief says. 'Defanged' Doctrine

But Gorsuch's BNSF dissent gives weight to the growing impression that regardless of whether Chevron and Auer are repealed, deference has become less important to the high court.

For instance, it echoes recent comments to Inside **EPA** by Robert Percival, director of the University of Maryland Carey School of Law's Environmental Law Program, where he said attorneys "are pulling back from making Chevron arguments" because they know the court's right wing is unlikely to support that line of thinking.

And in a March 4 post at SCOTUSblog titled "The Doctrine That Dare Not Speak Its Name," Daniel Hemel, an assistant professor at the University of Chicago Law School, says Ginsburg's deliberate avoidance of Chevron reinforces Gorsuch's point.

"Indeed, her opinion studiously avoids any reference to Chevron whatsoever. The dissent, by contrast, dances on Chevron's grave," Hemel writes. "It seems clear enough that Ginsburg, in order to cobble together a majority, had to steer clear of Chevron in her analysis. And if an opinion relying on Chevron can't muster a majority, then the doctrine has been defanged, even if not overruled."

But the Natural Resources Defense Council's John Walke is pushing back on that narrative, writing on Twitter that even if the high court is downplaying Chevron in its own decisions, the doctrine is still in force for lower courts -- including the U.S. Court of Appeals for the District of Columbia Circuit, which decides most **EPA** regulatory challenges.

"Considering only 2 of 9 justices have called for overruling Chevron, & the vast, vast majority of [federal] agency cases are decided by appellate courts -- especially the D.C. Circuit -- which rely on Chevron regularly, as do litigants, this take is questionable," he wrote in response to Hemel's article.

He also quoted from the late Justice Antonin Scalia's majority opinion in the 2013 case *City of Arlington, TX, v. FCC*, where the court held that Chevron deference applies to agencies' interpretations of the limits of their authority, as "an apt rejoinder" to Gorsuch.



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There, Scalia wrote that limiting deference to agencies on the question of where they have authority to regulate "would simply punt that question back to the Court of Appeals, presumably for application of some sort of totality-of-the-circumstances test-which is really, of course, not a test at all but an invitation to make an ad hoc judgment regarding congressional intent. Thirteen Courts of Appeals applying a totality-of-the-circumstances test would render the binding effect of agency rules unpredictable and destroy the whole stabilizing purpose of Chevron." -- David LaRoss (dlaross@ipwnews.com)

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## DEMOCRATS SEEK INQUIRIES AFTER GAO FINDS EPA DROPPED IRIS ASSESSMENTS

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Posted March 04, 2019

Democratic lawmakers are questioning **EPA's** decision to shrink its influential risk assessment program and seeking an ethics investigation into the top Trump research appointee's role, after Congress' watchdog raised questions about **EPA's** priority-setting process, which provided no explanation for a series of dropped assessments, including that of formaldehyde.

Sen. Tom Carper (D-DE) and other Democratic members of the environment committee, along with House science committee Chair Eddie Bernice Johnson (D-TX), sent March 4 letters to Administrator Andrew Wheeler and **EPA's** Scientific Integrity Officer Francesca Grifo, asking them to "investigate whether the Agency's efforts to prevent the completion of the formaldehyde health assessment constituted a violation of the agency's scientific integrity policy, and determine whether [David Dunlap, the top political appointee in **EPA's** Office of Research and Development (ORD)], violated the terms of his recusal agreement by participating in efforts related to the IRIS formaldehyde health assessment."

The lawmakers' letters accompany the release of a March 4 report from the Government Accountability Office (GAO), which reviewed both **EPA's** Integrated Risk Information System (IRIS) and the efforts of **EPA's** toxics office to stand up a new program on industrial chemical risk assessment and management as directed by Congress' 2016 reform of the Toxic Substances Control Act (TSCA).

The report does not contain any new recommendations but found that the Trump **EPA** eliminated as many as nine of 22 pending assessments from the IRIS research agenda, including its high-profile assessment of formaldehyde, which has been pending for more than 15 years.

GAO found that **EPA** initially narrowed the IRIS agenda by limiting its work to assessments that had been requested by program offices. Wheeler alluded to this review in remarks last August, when he said that he was reviewing IRIS assessments to determine importance to program offices.

But GAO found that after the IRIS program had surveyed program offices, ORD required a second round of prioritization that limited program offices' requests to "no more than three or four chemicals."

"ORD's second request was made verbally at a meeting and included direction to the program offices to limit their requests to no more than three to four chemicals," GAO said.

GAO added that "since neither the program and regional offices nor the IRIS Program had information from the Administrator's office about what the prioritization was meant to achieve, the IRIS Program was unable to provide guidance about what chemicals might be considered a priority, or how many they might be able to continue work on."

The end result, released publicly last December, contained an agenda of 11 chemicals, plus two that had already been issued in draft form for peer review. While several high-profile assessments remain on the list -- including re-assessments of arsenic and hexavalent chromium -- formaldehyde is noticeably absent. The public document provides no explanation for why chemicals were dropped from IRIS' agenda. Formaldehyde Assessment

Wheeler told senators in written responses to questions before his confirmation that the formaldehyde assessment was no longer a priority for IRIS. And the chemical industry has been preparing for the possibility that **EPA** may shift the assessment to its TSCA program.

But the lawmakers charge that Wheeler's previous responses "failed to fully describe the reason why formaldehyde was not identified as a top priority for the program offices," they write.

They add that they obtained documents dating from May to December 2018 indicating that ORD leadership expected to release a draft of the formaldehyde assessment for public comment in the fourth quarter of FY2019, and that it would be ready for other federal agencies' review in the fourth quarter of 2018.

An August 2018 memo requesting IRIS priorities from program offices from Jennifer Orme-Zavaleta, principal deputy assistant administrator in ORD, indicated that "in the past," **EPA's** offices of toxics, air, water and children's health as well as Regions 2 and 5 "all had expressed an interest in the completion of the formaldehyde health assessment."

The lawmakers said that in response, memos from the children's health, Superfund, and water offices, as well as Region 4 indicated "that they had a need for the formaldehyde health assessment" while the toxics office "noted different priorities," and the air office "did not indicate a need for any IRIS assessments to be completed at all."

The lawmakers added that after the second, verbal request for program offices to prioritize fewer chemical assessments for IRIS to perform, documents indicated "formaldehyde was not included on any office's priority list."

Further, they cite "GAO's records of interviews with **EPA** staff," in which "they said that the Administrator has his own political agenda, and that will determine their priorities. The Administrator said that he needed to make a decision on formaldehyde one way or another -- it couldn't just stay in limbo forever." Furthermore, "IRIS officials said that the "priority" survey in late October was actually a request made in person at a senior political meeting, and came from David Dunlap."

Dunlap, formerly of Koch Industries, was appointed to serve as the deputy head of ORD last fall. In December, he recused himself from "participating in any particular matter involving specific parties in which my former employer, Koch Industries, is a party or represents a party."

He also voluntarily recused himself from "participation in any matters related to the formaldehyde IRIS assessment" to avoid the appearance of an ethical conflict. Dunlap's Dec. 19 recusal statement is dated the same day that **EPA** released the new IRIS agenda.

But the lawmakers ask **EPA's** designated agency ethics official to "determine whether Mr. Dunlap has violated his recusal agreement," which they say stemmed from his former employer's criticism of **EPA's** formaldehyde efforts.

Their requests underscore long-running concerns that **EPA** efforts to stand up its TSCA program could result in pending assessments being moved to the toxics program while shuttering -- or sidelining IRIS.

A top priority could be the formaldehyde IRIS assessment. The last public draft, released in 2010, created a firestorm of criticism from industry because it linked formaldehyde exposure to development of certain types of leukemia, and upgraded formaldehyde's status to human carcinogen.

Senate Democrats in earlier letters calling for the release of the latest draft have stated that they are told the latest draft reaches the same conclusions about formaldehyde exposure and leukemia that the 2010 draft did.

While GAO does not say whether the formaldehyde assessment has been moved to the toxics office, it notes while IRIS was unable to release any documents because it was awaiting results of the Wheeler-ordered review, "several IRIS staff have been working increasingly for [the Office of Pollution Prevention and Toxics (OPPT)] to

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support its work preparing risk evaluations under TSCA."

ORD told GAO that last September -- three months after IRIS assessments were stopped from being released because of ongoing **EPA** leadership deliberations -- five of approximately 30 IRIS staff were supporting OPPT with 25 to 50 percent of their time. That increased last October, when 28 of approximately 30 IRIS staff were supporting OPPT with 25 to 50 percent of their time."

"According to IRIS officials, this was occurring primarily because OPPT has a significant amount of work to do to meet its statutory deadlines, and OPPT needed IRIS staff expertise to help meet those deadlines."

GAO added that "TSCA establishes a regulatory standard that generally differs from those under other environmental laws, so the TSCA assessments will not necessarily be relevant to other **EPA** programs that have relied on IRIS endpoint values in making their regulatory decisions." -- Maria Hegstad (mhegstad@iwpress.com)

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## **EPA URGES IRS TO ALIGN TAX LAW INCENTIVES WITH BROWNFIELDS DEFINITION**

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Posted February 28, 2019

**EPA's** Office of Brownfields and Land Revitalization (OBLR) is urging the Internal Revenue Service (IRS) to align definitions in a proposed rule to implement investment incentives in the 2017 Tax Cuts and Jobs Act with those in the brownfields program in order to spur redevelopment of former industrial sites.

The requested clarifications will give investors confidence that qualified opportunity fund (QOF) investments can be used to assess, remediate and redevelop brownfields located in qualified opportunity zones (QOZs), OBLR Deputy Director Patricia Overmeyer writes in recent comments.

"Subsequently, these clarifications may lead to the economic revitalization of many of our nation's disadvantaged communities."

The 2017 tax law created several federal incentives for private investment in disadvantaged areas known as QOZs, which are defined by census tract data. These incentives include a temporary deferral of capital gains taxes for profits reinvested in a QOF, a reduction in the amount of taxes owed on the original reinvestment and a permanent exclusion of capital gains taxes for profits earned from the opportunity fund, if certain conditions are met.

The IRS last year proposed implementing regulations for the tax law changes, taking comment on the proposal and related guidance documents through the end of last year and holding a public forum on the issue earlier this month.

Among the issues IRS sought comment on were the definition of a property's "original use" and whether "substantial improvement" had been made, two key terms used to determine whether projects are eligible for incentives but not defined in the tax law.

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**EPA** in its comments says QOZs have "the potential to spur investment in communities where neighborhoods have long been plagued by concentrated distress and those left behind by the economic recovery following the Recession," including many communities that struggle with stagnation and lack of access to capital due in part to the challenges of remediating and redeveloping their brownfield sites.

"**EPA's** OBLR encourages the IRS to clarify in the final guidance that investments in the assessment, remediation, and redevelopment of brownfields properties located in [QOZs] are included within the scope of [QOFs]," the comments say. "This clarification will provide an incentive to invest funds in the assessment, remediation, and reuse of brownfield properties."

Specifically, OBLR requests the IRS to clarify the definition of "original use" so that the term applies to property that is a brownfields site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation and Liability Act, which is the law that establishes **EPA's** brownfields program and guides brownfields considerations by many other federal agencies.

"Defining 'Original Use' to incorporate brownfields properties located in QOZs creates the best solution to enabling QOF investments in brownfields remediation and redevelopment," **EPA** says. "This clarification will address the concern that the 30-month window for substantial improvement is unrealistic for brownfields properties, which take longer than traditional vertical development projects due to the added challenges of contamination." "Vacant Or Underutilized"

Additionally OBLR says cleanup or reuse of property that is vacant or underutilized for a period of one year or more should constitute an original use and that foreclosed and tax-reverted properties held by local units of government should be treated as "underutilized or abandoned property."

**EPA** requests that the IRS clarify that any property that has been foreclosed upon and reverted to a local unit of government or land bank should qualify as "vacant and underutilized" regardless of how long it has been vacant, abandoned or underutilized.

"Local units of government often acquire brownfields and other blighted properties through tax delinquency, abandonment, bankruptcy, etc. A bright line test around status of ownership for properties in foreclosure, receivership, or involuntary transfer may be easier to determine than the historical use of the property and expedite investment in assembled properties, particularly in distressed urban areas," the comment say.

Other clarifications **EPA** requests are for improvements to land, including brownfields assessment, cleanup and other site preparation costs, are included as expenses that will meet the "substantial improvement" test for a QOZ property; that gains from QOF investment in brownfield improvements to land should be permitted to be carried over into other QOZ investments; and that QOF investments be allowed to be stacked for brownfield properties that require remediation.

OBLR says that without the clarification about improvements to land, it is unclear how improvements to the land itself factor into a calculation of substantial improvement, given that the adjusted basis example in an IRS revenue ruling last year pertains only to improvements to a building. — Lara Beaven (lbeaven@iwpnews.com)

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**FORMER CASAC CHAIR ALLEGES 'PROCEDURAL IRREGULARITIES' IN NAAQS REVIEWS**

Posted February 28, 2019

A former chairman of **EPA's** Clean Air Scientific Advisory Committee (CASAC) is alleging "procedural irregularities" in the conduct of current panel chairman Tony Cox, charging it further undermines the credibility of the **EPA's** truncated process for reviewing national ambient air quality standards (NAAQS).

In written comments submitted to **EPA** Feb. 27, Chris Frey, CASAC's former chairman and a member of previous specialized subpanels, says Cox's conduct acting outside of formal public settings further compromises the integrity of NAAQS reviews.

Frey says that Cox asked **EPA** staff and a third-party organization, the Health Effects Institute (HEI), written questions outside of the formal CASAC process that is subject to federal regulations under the Federal Advisory Committee Act (FACA).

This flouts the ability of the public to follow proceedings, contrary to FACA, Frey says.

In a statement, an **EPA** spokeswoman rejected Frey's claims that the agency's interactions are at odds with FACA. "The open meeting and advance public notification requirements of FACA only pertain to committee meetings. The follow-up questions from a CASAC member and the responses from the **EPA** and the public are not considered committee meetings and therefore do not need to occur in a public setting nor do they require any public notification.

"The follow-up questions from a CASAC member and the responses from the **EPA** and the public are considered committee records and must be available for public inspection. We meet the public inspection requirements of FACA by posting these records on the publicly accessible meeting webpage," she added.

Frey and other former panelists have leveled withering criticism of the current seven-member CASAC, charging that without the help of specialized subpanels that **EPA** has scrapped, the chartered panel lacks the expertise and capacity to properly oversee NAAQS reviews.

Their criticism is directed at policies put in place by former Administrator Scott Pruitt, who in a May 9 memo set out a policy to shorten NAAQS reviews, by producing fewer documents in the process.

Agency air chief Bill Wehrum has continued this policy and has encouraged CASAC to produce fewer drafts of documents, and less **EPA** consultation with the panel.

Wehrum's goal is to complete review of the ozone NAAQS by the statutory deadline of October 2020, and the particulate matter (PM) NAAQS by December 2020, including "fine" particulate, or PM2.5. At a Dec. 12 and 13 public meeting of CASAC in Arlington, VA, the panel discussed the PM2.5 review, but some panelists requested further drafts of the integrated science assessment under discussion.

But Frey and other former panelists have already warned **EPA** and CASAC that the agency's minimalist approach to review of NAAQS-related scientific documents risks making the eventual NAAQS rules themselves legally indefensible.

For example, he called the truncated review process a "joke" and warned the shortened approach undermines the panel's ability to credibly assess the PM NAAQS as mandated by law. Accountability Studies

Now Frey is criticizing Cox's efforts, citing a Dec. 14 email to HEI on Cox's behalf in which an **EPA** staff member asked HEI about the benefits of accountability studies, which evaluate the effectiveness of pollution control programs.

"To your knowledge, have accountability studies been completed from which it is possible to obtain quantitative estimates of the increases in life expectancy or decreases in all-cause or cause-specific mortality or morbidity rates caused by the independent direct effects of reductions in ambient PM levels?" the agency asked.

HEI, which is funded jointly by **EPA** and industry, is funding research in this emerging field.

But Cox, a longtime industry consultant, is a noted skeptic of some "causal" linkages between air pollution and certain adverse health effects.

In its Feb. 21 response, HEI said that none of the studies it is funding "has been designed specifically to provide the quantitative estimates mentioned in the question, [although] many of them do take advantage of the clear temporal variation in exposure before and after an intervention to determine . . . that the interventions resulted in clear and quantifiable changes in air pollution and different measures of health outcomes."

But it caveated that statement by pointing to certain design elements in studies that could produce misleading results, observing that where multiple pollution reduction programs are in place, is hard to pinpoint which one is producing the most benefit.

It said it "stands ready to provide whatever additional information you might find useful, or to answer any further questions that CASAC might have."

But Frey says the communication between **EPA** and HEI is not consistent with CASAC operating procedures or with FACA. And its apparent request for public comment from some but not all members of the public is unusual. "A request for public comment is properly conveyed via a Federal Register notice of a public meeting of the CASAC," he says. 'Unilateral' Actions

And he says Cox's "unilateral" actions give the false impression that Cox is speaking for the entire CASAC, when in fact he is speaking only for himself. "No one, not even the chair, can speak for CASAC. CASAC speaks for itself via letters to the Administrator that have been approved by the chartered CASAC," Frey writes.

"The formal process for how CASAC can and should interact with **EPA** is not amenable to an ongoing dialectic approach of individual members peppering the agency staff with questions in a post hoc and ad hoc manner. The public has a right to expect that interactions between CASAC and **EPA** will take place at publicly noticed meetings in the full view of the public," Frey writes.

Further, "such post hoc and ad hoc communications that circumvent the public meeting should not occur because they do not represent a clear operating procedure and potentially may be contrary to statute and guidance."

Also, Frey takes issue with a memo written by Cox posing questions for the panel to consider at the December meeting. "It is highly unusual and inappropriate for the chair of CASAC to, in effect, create their own set of charge questions, as was the case" in the undated memo.

The memo file name includes an apparent date, "10302018," suggesting it "may have been issued on October 30," yet was not revealed to the public until Dec. 12.

Frey says, "CASAC does not exist to answer questions posed by the chair." Therefore, "Members of CASAC should be informed that they have no obligation whatsoever to answer the ad hoc questions that were posed by the chair."

The current CASAC lacks experience, Frey says. "The apparent lack of understanding of, attention to, and respect for proper operating procedures seems to be a culture of the current CASAC." He references Cox's suggestion to create a "tiger team" to look into certain issues, or other "creative" ways of doing things. Such remarks could create the impression "that communications may have taken place outside of the proper public deliberative process."

In general, "the procedural irregularities" identified "significantly undermine confidence that the chartered CASAC is compliant with applicable operating procedures and laws and further undermines the credibility of the review process," Frey concludes. He urges **EPA** to "publicly issue clarifications for the benefit of the public, and the members of CASAC, on how CASAC should conduct its work" at the next CASAC public meeting.

But it is unclear when such a meeting might take place. CASAC's public calendar shows no scheduled meetings for 2019, though **EPA** in a Feb. 28 Federal Register notice sought applications to recruit an expert in ecology to the panel.

The **EPA** spokeswoman says that an unnamed member of the current panel "is retiring from federal service and has requested to resign from the CASAC." However, CASAC member Timothy Lewis is listed on the CASAC website as a "supervisory research ecologist with the U.S. Army Corps of Engineers." — Stuart Parker (sparker@iwpnews.com)

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## JUDGE REJECTS NOVEL CLAIM THAT AIR ACT FAILS TO GRANT INJUNCTIVE RELIEF POWER

*Inside EPA* | 03/07/2019

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Posted March 04, 2019

A federal judge has rejected a novel claim by Missouri-based utility Ameren that he lacks Clean Air Act authority to order injunctive relief to remedy past harms, dismissing what sources describe as a long-shot argument that runs counter to what **EPA** — and federal courts — have successfully been doing for decades.

Judge Rodney Sippel of the U.S. District Court for the Eastern District of Missouri Feb. 27 rejected summary judgment motions in the long-running NSR enforcement case, *United States and Sierra Club v. Ameren Missouri*.

"Neither the plain language of the Clean Air Act nor the case law cited by Ameren supports its claim that no injunctive relief is available to remedy Ameren's past violations of the Clean Air Act. As a result, I will deny Ameren's motion for summary judgment," he wrote.

He also rejected **EPA's** argument in the pre-trial phase that flue gas desulfurization (FGD) constitutes best available control technology (BACT), though he will hear arguments on the issue during an upcoming trial.

One source following the case describes Ameren's claims as "swinging for the fences." The company "essentially argued that the court was powerless to issue an injunction for Clean Air Act violations, despite plain statutory language and case law interpretations to the contrary. Ameren's argument was a long-shot and legally unfounded, and we are not surprised that the court recognized its ample authority to bring Ameren into compliance with the law."

And one environmentalist attorney calls the Ameren argument "so dumb that it would've been shocking for a court to accept it. Mind you, **EPA** has been requiring injunctive relief for past NSR violations for over three decades."

Ameren did not respond to a request for comment but the source following the case says the company has long said it will appeal Sippel's underlying liability ruling — and likely the upcoming remedy ruling — to the U.S. Court of Appeals for the 8th Circuit. As a result, the case is "far from over," the source adds.

While the argument may be novel, Ameren's claim that courts lack authority to impose injunctive relief to address past harms is the subject of one other similar case, where Texas-based utility Luminant Generation is seeking en banc review of an adverse ruling on the topic by the 5th Circuit.

In *United States v. Luminant Generation*, the 5th Circuit in a split decision issued last October overturned a district court ruling backing Luminant's injunctive relief claim. The appeals court held that **EPA** can seek injunctive relief even when the five-year general statute of limitations has passed.

**EPA** and the Sierra Club are opposing the company's bid for en banc review in Feb. 12 filings where they defend the agency's right to ask courts for injunctive relief to force facilities to install pollution controls for years-old NSR violations.

Sippel referenced the Luminant case in his order, noting, "the one district court case that adopts Ameren's interpretation of the statute has been reversed by the Fifth Circuit. . . . As a result, Ameren's argument concerning injunctive relief is unfounded." Remedy Phase

The latest phase in the long-running Ameren suit dates back to January 2017, three days after President Donald Trump's inauguration, when Sippel ruled that Ameren unlawfully evaded prevention of significant deterioration (PSD) permit requirements -- which is the NSR equivalent for areas that are in attainment with national air quality standards -- when it upgraded boilers at Rush Island.

In the decision, Sippel largely backed **EPA's** positions on two key questions: what constitutes "routine maintenance" and is thus considered exempt from triggering an NSR/PSD permit review, and how the "demand growth" exclusion applies to higher emissions from power plants resulting purely from increased electricity demand.

In the remedy phase, Ameren argued Sippel lacks authority to order injunctive relief for past violations of the air law, claiming the remedy was only available to address ongoing violations.

It also argued that he cannot determine what constitutes BACT and that he cannot order emissions reductions at a non-offending plant.

Ameren argued there are technologies less expensive than FGD that could be considered BACT. It also argued the court cannot determine what constitutes BACT because "that would take away permitting authority from the Missouri Department of Natural Resources (MDNR) and violate the federalism inherent to the Clean Air Act."

In denying the company's motion for summary judgment, Sippel rejected all three of those claims. Ameren's arguments "presume a far more reaching determination than plaintiffs have requested. The plaintiffs have not asked me to write and issue a permit. Such a request would violate the principles invoked by Ameren, superseding the administrative process . . . Instead, the plaintiffs seek an order requiring any permit issued for Rush Island to install [FGD] as BACT."

Sippel also notes that few district courts have considered whether a court may enjoin a defendant to install a particular technology as BACT.

While Sippel rejected the company's requests, he said its lawyers "may present these disputes of fact at trial to argue that the balance of hardships and public interests favor a remedy other than the one sought by **EPA**. For that reason, I cannot grant **EPA's** motion for summary judgment."

The source following the case notes that Sippel is effectively saying he cannot determine whether FGD constitutes BACT "just on the papers. He wants to hear" more details at an upcoming April trial before making a decision.

Finally, Sippel rejected Ameren's claim that he cannot order injunctive relief to reduce pollution at a nearby coal-fired power plant, the Labadie Energy Center, because it is a "non-offending plant." He writes that **EPA** and the Sierra Club seek two kinds of relief: an order requiring Ameren to get a PSD permit and install BACT at Rush Island and an order requiring emissions reductions at Labadie to offset the excess emissions from Rush Island that would reduce "future pollution affecting the same region, in an amount commensurate with Rush Island's excess emissions."

Ameren seeks to characterize the second request as an "end run" around NSR violations but "Ameren's characterization misconstrues the kind of relief that the **EPA** is requesting," which is for Labadie to offset the sulfur dioxide illegally emitted from Rush Island, Sippel wrote.

"As a result, Ameren's argument that this relief would undermine the structure of the Clean Air Act and **EPA's** enforcement program is unpersuasive," he found.

The case will now head to a non-jury trial April 8, where Sippel will ultimately determine what steps Ameren will have to take to remedy its unlawful activity.

The source following the case says the trial provides an opportunity for plaintiffs to provide the court "with some options to remedy the harm from Ameren's illegal conduct." -- Dawn Reeves (dreeves@iwpnews.com)

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## SENATE GOP CONFIRMS WHEELER AS EPA CHIEF, AMID DEMOCRATS' ATTACKS

*Inside EPA* | 03/07/2019

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Posted February 28, 2019

Senate Republicans have voted to confirm Andrew Wheeler to be the Trump **EPA's** second permanent administrator, after the chamber's Democrats uniformly rejected the nomination while slamming the agency's rollbacks of climate and other regulations.

The chamber voted 52-47 on Feb. 28 to confirm Wheeler, who had been serving as acting chief since July after former Administrator Scott Pruitt resigned amid a swirl of ethics scandals.

Two relatively moderate lawmakers who had earlier voted to confirm Wheeler as deputy administrator in April 2018 -- Sens. Susan Collins (R-ME) and Joe Manchin (D-WV) -- voted against his current nomination, ensuring Wheeler was approved with only GOP support and that he received bipartisan opposition.

Collins cited **EPA's** rollback of climate rules, while Manchin charged that the agency is not being aggressive enough on addressing drinking water threats from per- and polyfluoroalkyl substances (PFAS).

In a Feb. 27 procedural vote to end debate on the nomination, Manchin voted no, while Collins voted yes.

Wheeler, however, sidestepped any real threats to confirmation when a group of five oil-state Republicans did not follow through on their implied threat to vote against his nomination if **EPA** failed to provide them additional details on a plan to overhaul the compliance credit market for the renewable fuel standard.

Wheeler has generally avoided the ethics charges that plagued his predecessor, though he has mostly continued the Trump administration's broad deregulatory agenda targeting multiple climate change, water, air and other rules issued during the Obama administration.

Ahead of the vote during floor debate, Democratic senators assailed those rollbacks, charging that Wheeler is advancing even some deregulatory measures opposed by industry and highlighting his past work as a coal lobbyist.

"He made a living working for coal. Now, we're supposed to believe he's the best person to keep coal companies in line," said Sen. Brian Schatz (D-HI). "If this were a movie about corruption in politics, this script would be thrown out because it's too obvious."

Democrats also used the debate over Wheeler's nomination to underscore their calls to address climate change, calling it the most pressing environmental issue facing the country.

Wheeler's nomination "goes right to the heart of whether or not we are going to respond to the magnitude of this challenge," said Sen. Ed Markey (D-MA). "I don't know how anyone can vote for Andrew Wheeler given the science that's in front of us. This is just doubling down on a disaster." — Lee Logan (llogan@iwpnews.com)

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## **BIPARTISAN HOUSE BILL WOULD BOOST EPA WATER INFRASTRUCTURE FUNDING LEVELS**

***Inside EPA* | 03/07/2019**

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Posted March 05, 2019

A bipartisan group of House lawmakers has introduced legislation to boost authorized levels of **EPA's** clean water state revolving fund (SRF) to \$4 billion annually, more than double its current appropriations, as well as authorize billions of dollars to address sewer overflows, fund states' Clean Water Act (CWA) implementation and augment existing sources of water.

Reps. Peter DeFazio (D-OR), Grace Napolitano (D-CA), Don Young (R-AK) and John Katko (R-NY) introduced the bill March 5.

DeFazio chairs the House Transportation and Infrastructure (T&I) Committee while Napolitano leads the committee's water resources and environment panel. Young, a former chairman of the committee, and Katko also serve on T&I.

The bill -- which would reauthorize the fund for the first time since 1994 -- also enjoys broad support among industry, water, labor and environmental groups, suggesting it could advance given calls from lawmakers and the Trump administration for increased infrastructure funding.

"It's clear communities across the country need a partner to carry out critically important protections, which is why our bill authorizes approximately \$23.5 billion to improve our wastewater infrastructure, make it more resilient to disasters, and affordable for all communities. What's more, investing in our water infrastructure will create good paying jobs and provide communities with infrastructure that will last for decades," DeFazio said in a March 5 statement.

Napolitano, who played a key role in advancing two water infrastructure bills last year, said the measure "will help to address the current crisis we are facing in the West due to ongoing drought and increased stormwater control issues" by making "tremendous investments in water recycling and reuse, groundwater recharge, and stormwater projects."

The bill's annual authorization of \$4 billion for the clean water SRF is a significant boost over previously authorized levels and recent appropriations of roughly \$1.3 billion.

Additionally, the bill authorizes \$900 million for grants to municipalities to capture, treat or reuse combined and sanitary sewer overflows or stormwater; \$1.5 billion over five years for state water pollution control agencies to implement their delegated CWA water pollution control programs; \$600 million over five years for pilot programs aimed at addressing wet weather discharges, promoting stormwater best management practices, undertaking integrated water resource management and increasing the resiliency of treatment works to natural or man-made disasters; and \$375 million in grants over five years for alternative water source projects, including projects that reuse wastewater or stormwater to augment the existing sources of water. Stakeholder Support

The bill has support from 80 municipal, industry and environmental groups, although some of the supporters say they would like to see additional changes.

A coalition of environmental groups, including Sierra Club and Natural Resources Defense Council, notes the proposed authorization for the SRF of "\$4 billion annually would more than double current funding levels and help to make a dent in our nation's substantial infrastructure backlog. In the process, it would also create

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thousands of jobs for America's workers."

But the environmental groups say they hope the legislation can go even further by increasing the authorization to \$6 billion annually. "These additional funds would provide assistance to even more communities and return federal wastewater and stormwater funding levels to the amount appropriated under President Reagan (adjusted for inflation)," the groups say in a March 4 letter to T&I.

The groups also call for directing investment to the communities most in need; adopting measures designed to ensure infrastructure investments are affordable; directing at least 20 percent of funding to green infrastructure projects; and addressing the lack of adequate onsite wastewater options for many rural communities.

The Council of Infrastructure Financing Authorities (CIFA), which represents state agencies that administer the clean water and drinking water SRFs, says in a Feb. 22 letter that it supports the bill because "increased funding can help accelerate investment in water infrastructure."

But it says it is "concerned that the growth in federal requirements during the last decade has depressed demand for Clean Water SRF loans," saying its members have said the cumulative impact of compliance with all federal requirements is the number one reason for postponing investment in critical water infrastructure.

The concern over federal requirements, including procurement of domestic iron and steel and Davis-Bacon prevailing wage mandates, echoes information in an American Water Works Association report last year.

"We hope to work with you to streamline and reduce the burden of federal requirements on Clean Water SRF borrowers to maximize the program's effectiveness and help more communities proceed with construction of these much needed water infrastructure projects," CIFA says.

However, National Association of Clean Water Agencies, which represents public water utilities, and public works groups in a March 4 letter unequivocally support the bill, saying "the legislation will catalyze greater investment in critical infrastructure and help communities around the country address local water quality issues."

Groups representing mayors, cities and counties in a March 1 letter say that they encourage the committee to also consider providing additional tools that offer communities flexibility.

"Local governments need to be able to partner with their state and the federal government to meet their wastewater and stormwater infrastructure needs in a manner that is also affordable to their citizens," the U.S. Conference of Mayors, National League of Cities and National Association of Counties writes.

"We thank the committee for its efforts in passing the bipartisan integrated planning legislation last year and would like to continue our work with you to provide additional flexibility and tools to communities who are facing substantial wastewater and stormwater burdens."

A coalition of groups representing construction, engineering, labor, conservation, public works and manufacturing advocates, known as the Water Infrastructure Network, note in a March 4 letter that for every \$1 billion invested in water infrastructure, over 23,000 jobs are created. — Lara Beaven (lbeaven@iwpnews.com)

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**HEARING ON PROPOSED CWA RULE PREVIEWS LEGAL ARGUMENTS ON  
FINAL POLICY**

Posted March 01, 2019

Speakers at **EPA's** public hearing on its proposed Clean Water Act (CWA) jurisdiction rule gave early signals of how they plan to attack or defend the eventual final version of the rule in court, with environmentalists hinting at procedural and substantive arguments that they could raise in litigation aimed at striking down a narrow CWA test.

In contrast, supporters of the rule said at the hearing that it would provide clarity on the scope of the water law and do so in way that Congress intended and that complies with Supreme Court precedent, though some signaled they might seek to narrow it even further than the Trump administration has already proposed.

**EPA** and the Army Corps of Engineers co-hosted their only planned hearing on the proposed jurisdiction rule on Feb. 27-28 in Kansas City, KS, offering a forum for supporters and opponents of the standard to voice their comments ahead of the current April 15 deadline for written input.

The agencies argue that the Obama administration's 2015 CWA rule was far broader in scope than the law or federal courts have intended, and they are proposing to replace it with a much narrower version.

While speakers' remarks were limited to three minutes, they offer signs of what stakeholders see as the strengths and weaknesses of the proposal that would greatly narrow the universe of waterbodies subject to the CWA, previewing the arguments in store for court challenges to a final rule.

In their prepared remarks, environmentalists outlined what they see as major legal vulnerabilities in the rule that are both substantive, based on arguments that it does not achieve the CWA's goal of preserving navigable waters' physical chemical and biological health, and procedural such as a failure to analyze relevant science and vagueness on how regulators will decide when smaller or isolated waters are protected.

Meanwhile, remarks from industry and conservative speakers backed a narrow jurisdiction standard on principle, but displayed divisions between groups that support the Trump administration's proposal as issued and others who see it as still too broad.

Such comments indicate the potential for court challenges to the eventual final rule from the right as well as the left, just as some environmental groups argued that the broader rule issued by the Obama administration -- which **EPA** and the Corps are now working to repeal and replace on the grounds that it goes beyond Congress' intent -- was still too narrow.

As proposed, the new CWA standard would limit jurisdiction to navigable waters and tributaries or wetlands that "contribute flow" to those waters during "a typical year." It would for the first time expressly revoke federal authority over "ephemeral" waters that flow only in response to rain and other weather events, as well as dropping the long-standing claim of federal jurisdiction over all interstate waters regardless of their relationship to navigable waterbodies.

Moreover, it would only cover wetlands that directly contact navigable waters or tributaries, a far narrower standard than prior rules that left room for jurisdiction over at least some apparently isolated wetlands if they share a hydrological connection with other waters.

The proposal is largely based on the plurality opinion authored by the late Justice Antonin Scalia in the court's last major CWA jurisdiction case, 2006's *Rapanos, et al., et ux., v. United States*, which said the CWA should only cover "relatively permanent" waters with a "continuous surface connection" to navigable waterbodies. The court in *Rapanos* split 4-4-1, with no opinion commanding majority support.

However, it also uses elements from former Justice Anthony Kennedy's solo concurrence that sets out a broader test based on a "significant nexus" between waterbodies. Lower courts have generally held that Kennedy's test rather than Scalia's is the binding result from *Rapanos*, and it was the basis for the Obama administration's 2015 rule. But observers see the high court's reinforced conservative majority as likely to back Scalia's test if the new rule comes before them. Environmentalists' Comments

Environmentalists' prepared remarks argue that the proposed rule suffers from an array of legal flaws, echoing early signs that they would employ procedural as well as substantive challenges to a final CWA rule.

"First, though the agencies attempt to obscure this fact, the proposal relies on a Supreme Court opinion which

was rejected by five justices and which the lower courts have resoundingly held cannot dictate the extent of Clean Water Act protections. Proceeding down this illegal path is a recipe for the rule's invalidation and will undermine the stability of the law the agencies claim they want. That alone is reason enough to abandon this proposal," Natural Resources Defense Council attorney Jon Devine said in his prepared remarks.

Devine continues that the rule "is full of vague new concepts that will not deliver the on-the-ground clarity the administration repeatedly says it wants," which he says would create a raft of implementation problems. "Polluters and people affected by pollution will somehow have to figure out such things as what a particular water body looks like in a 'typical year' and whether streams are fed by groundwater or not."

Meanwhile, former Obama **EPA** Region 7 Administrator Mark Hague said in his prepared statement that the lack of a scientific analysis underlying the proposal could sink it in court.

"The critical difference between the 2015 rule and this proposal is that the new definition of jurisdictional waters eliminates ephemeral waters, non-navigable interstate waters and many wetlands. Yet the agencies state in this proposal that there are no data available to identify where or how many of these excluded waters and wetlands exist. Public comments by senior agency officials, as reported by several media sources during the public announcement of the proposed rule, indicate that key elements of scientific data are either unknown, difficult to obtain or are unavailable," his remarks say. Supporters' Comments

Meanwhile, Kent Eckles, the Kansas state director for the American Petroleum Institute, used his remarks to voice broad support for the Trump administration's proposal. "The proposed rule properly considers and establishes the outer bounds for their authority under the Act that are consistent with its text, structure, legislative history and applicable Supreme Court precedent," he said.

But he echoed the critics who said the proposed version of the rule is vague, calling for a "uniform" treatment of waters that flow on a seasonal basis.

"While we cannot summarize all our comments in a mere 3 minutes, we encourage the agency to look closely at the workability of its treatment of intermittent and perennial flow, which takes into account case-by-case regional and geographic variations. We believe that a more uniform and precise definition of seasonal surface flow could provide greater clarity to all stakeholders," he said.

By contrast, attorney Anthony Francois of the free-market Pacific Legal Foundation attacked the proposal as overbroad, and argued that any use of the Kennedy test is illegal.

"Unfortunately the proposal misses the mark in important ways due to the agencies effort to read the Rapanos plurality and concurrence coherently . . . If the agencies are going to use the plurality, they must use the plurality as they find it, not blended with the concurrence," his remarks say.

Specifically, he argued that the CWA should exclude any waterbody that is dry for at least a season out of the year -- which would be far more limited than the proposed language, which allows for waters that flow only in a single season to be considered tributaries.

"Proper application of the plurality would limit the proposal to continuously flowing tributaries, not intermittent ones, with a threshold flow criteria, and would allow at most for 90 or 120 days without continuous flow. This is the only way to give effect to the plurality's statement that it is the 'ordinary presence of water' that is determinative, and that tributaries must be what would be called a stream in ordinary parlance," Francois said. -- David LaRoss (dlaross@iwpress.com)

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Message

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**From:** Deegan.Dave@epa.gov [Deegan.Dave@epa.gov]  
**Sent:** 2/28/2019 10:14:25 PM  
**To:** Palmer, Margo [Palmer.Margo@epa.gov]  
**CC:** Ng, Jun [Ng.Jun@epa.gov]  
**Subject:** Re: Announcing our new Regional Administrator - Paul Mercer

Yes, and not sure of exact timing. Thanks for flagging!

Thanks,  
Dave

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Dave Deegan  
US EPA, Region 1  
617.918.1017 - office  
617.594.7068 - mobile  
[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)

On Feb 28, 2019, at 4:09 PM, Palmer, Margo <[Palmer.Margo@epa.gov](mailto:Palmer.Margo@epa.gov)> wrote:

Hi Dave,

I assume that you will put together the bio for the website. Should this be posted Monday, or....

Thanks,  
Margo

617.918.1949  
857.998.9043 cell

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**From:** Szaro, Deb  
**Sent:** Thursday, February 28, 2019 7:47 AM  
**To:** R1 ALLEPANEEPA Employees Only <[R1\\_ALLEPANEEPAONLY@epa.gov](mailto:R1_ALLEPANEEPAONLY@epa.gov)>  
**Subject:** Announcing our new Regional Administrator - Paul Mercer

I'm delighted to inform you that Paul Mercer has been appointed as our Regional Administrator and will start on Monday, March 4<sup>th</sup>. <!--[if !vml]--> <image002.jpg><!--[endif]-->

Paul is a seventh generation Mainer and lifelong outdoorsman who grew up in Bucksport, Maine. He is a graduate of Maine Maritime Academy and began his working career traveling the globe as a Marine Engineer aboard US merchant vessels. Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America. He has enjoyed successes such as achieving major reduction of emissions and life extension at the paper mill in Bucksport, Maine as a lead developer of the Bucksport Energy Project.

A member of the senior management team at Maine Maritime, Paul held positions as Associate Professor and Department Chair within the Engineering Department, and Assistant to the President for Sustainability. He also served as Director of Facilities, Vice President of Advancement and Vice President of Operations. He was instrumental in promoting innovation and environmental initiatives while at the Academy.

As Commissioner of the Department of Environmental Protection until last October, Paul combined professional experience and dedication to protecting Maine's natural resources to promote the needs of the State. Using professional and personal ethics, collaboration, open communication and common sense, he encouraged innovation and businesses to support a sustainable economy while protecting the State's valuable environment. He's long promoted the need for EPA's Office of Research and Development to align with state needs and resources, and has been a strong proponent of ORD scientists visiting states as a way to meet those needs.

Paul's personable, collaborative leadership style shined through at regional meetings of state environmental commissioners, where he has earned their respect and support. Paul is committed to furthering EPA's mission and working closely with our state partners.

Paul is a dedicated family man. He and his wife called Penobscot, Maine their home and they have two grown children and a grandchild.

Please join me for an All Hands - Meet and Greet for Paul at 10:00 am on Monday, March 4<sup>th</sup> in Leighton Hall with video to the Kennebec at the Lab.

Message

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**From:** Parsons, Doug [Parsons.Douglas@epa.gov]  
**Sent:** 3/5/2019 1:50:53 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** Region 1

<https://insideepa.com/daily-news/mercer-epa-region-1-administrator-pick-withdraws-start-tenure>

See above article. Must have known this person would need to work with you....ha, ha...

Douglas W. Parsons  
Office of Pollution Prevention and Toxics  
U.S. Environmental Protection Agency  
1201 Constitution Ave NW  
Washington, D.C. 20460  
Phone: (202)564-0341  
Email: parsons.douglas@epa.gov



Message

---

**From:** Palmer, Margo [Palmer.Margo@epa.gov]  
**Sent:** 3/4/2019 5:03:15 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]  
**CC:** Ng, Jun [Ng.Jun@epa.gov]  
**Subject:** RE: Time for Paul Mercer bio and org chart update?

Appreciate knowing...

Thanks,  
Margo

617.918.1949  
857.998.9043 cell

---

**From:** Deegan, Dave  
**Sent:** Monday, March 04, 2019 11:51 AM  
**To:** Palmer, Margo <Palmer.Margo@epa.gov>  
**Cc:** Ng, Jun <Ng.Jun@epa.gov>  
**Subject:** RE: Time for Paul Mercer bio and org chart update?

No need to update anything. Mr. Mercer decided to decline the job, so our existing status quo remains correct.

Best Regards,  
Dave

~~~~~

Dave Deegan  
U.S. EPA, New England Regional Office  
Office of Public Affairs  
Media Relations | Social Media | Web Content  
phone: 617.918.1017 | mobile: 617.594.7068  
email: [deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)



---

**From:** Palmer, Margo  
**Sent:** Monday, March 04, 2019 11:15 AM  
**To:** Deegan, Dave <[Deegan.Dave@epa.gov](mailto:Deegan.Dave@epa.gov)>  
**Cc:** Ng, Jun <[Ng.Jun@epa.gov](mailto:Ng.Jun@epa.gov)>  
**Subject:** Time for Paul Mercer bio and org chart update?

Hi Dave,

Any idea when we should update the org chart on the website? I assume this is Paul Mercer's first official day.

Thanks,  
Margo

617.918.1949  
857.998.9043 cell

---

**From:** Boudrot, Steve  
**Sent:** Monday, March 04, 2019 10:20 AM  
**To:** Palmer, Margo <Palmer.Margo@epa.gov>; Ng, Jun <Ng.Jun@epa.gov>  
**Subject:** FW: Broken Links Report for February 2019

Margo/Jun – Nice work! I assuming you both had a lot to do with us not having many to begin with and with clearing them up so fast!

Also requesting a minor change to this page – Art Johnson is still listed as acting even though he is perm now. Also wondering if this page is on the radar for updating when the new org structure is implemented.

<https://www.epa.gov/aboutepa/organization-chart-epas-region-1-office>

Thanks,  
Steve

---

Steve Boudrot  
Chief, Information Resource Unit  
US EPA Region 1  
Boston, MA  
Voice: 617-918-1942  
Cell: 857-829-8244  
Fax: 617-918-0942

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**From:** Darlington, Lin  
**Sent:** Thursday, February 28, 2019 5:16 PM  
**To:** Web Council Support <Web\_Council\_Support@epa.gov>  
**Subject:** Broken Links Report for February 2019

**Dear Web Council Members and Friends,**

Here is our Broken Links Strategic Measure submission for February. So far, 88% of the 1,333 “High Priority” broken links that were identified on 11/5/18 have been fixed! Congratulations to **OCSPP, OECA, R1, R4, R7 and R10** for fixing all of theirs! Thanks to **OW, OAR, ORD, and OA**, for fixing over 800 links between them!

## High Priority Broken Links

The list of “High Priority” broken links was established on 11/5/18.

| AA    | Broken Links as of November 5, 2018 | Fixed Links as of 2019-02-27 | High Priority Links Remaining to be Fixed |
|-------|-------------------------------------|------------------------------|-------------------------------------------|
| OA    | 157                                 | 128                          | 29                                        |
| OAR   | 255                                 | 234                          | 21                                        |
| OARM  | 4                                   | 3                            | 1                                         |
| OCFO  | 1                                   | 0                            | 1                                         |
| OCSPP | 88                                  | 88                           | 0                                         |
| OECA  | 9                                   | 9                            | 0                                         |

|        |      |      |     |
|--------|------|------|-----|
| OEI    | 60   | 31   | 29  |
| OGC    | 5    | 0    | 5   |
| OITA   | 20   | 19   | 1   |
| OLEM   | 84   | 79   | 5   |
| ORD    | 197  | 172  | 25  |
| OW     | 301  | 292  | 9   |
| REG 01 | 2    | 2    | 0   |
| REG 02 | 2    | 0    | 2   |
| REG 03 | 33   | 7    | 26  |
| REG 04 | 1    | 1    | 0   |
| REG 05 | 26   | 24   | 2   |
| REG 06 | 16   | 14   | 2   |
| REG 07 | 7    | 7    | 0   |
| REG 08 | 14   | 13   | 1   |
| REG 09 | 26   | 25   | 1   |
| REG 10 | 25   | 25   | 0   |
| Total  | 1333 | 1173 | 160 |

As a reminder, there is a lag between the time links are fixed and the time they show up as fixed in the [broken links checker](#), so get your fixes in early in the month to ensure they're reflected on the monthly reports.

Also, we will soon switch from tracking progress on the static list of "High Priority" links that were identified on 11/5/18, to tracking progress in reducing the total number of bad links on [www.epa.gov](http://www.epa.gov). Our target is to fix 3,375 bad links this year. Guidance will be forthcoming on the process for tracking the total number of links. Feel free to reach out to me or Judy Suzuki if you have questions or need any assistance.

Thanks,



Lin Darlington, Director  
Web Content Services Division,  
Office of Information Management  
Office of Mission Support  
U.S. Environmental Protection Agency  
Desk: 202-566-0696 || Cell: 202-262-2906

"Never underestimate the power of a small group of committed people to change the world. In fact, it is the only thing that ever has." ~ Margaret Mead

Message

---

**From:** Edwards, Beth [Edwards.Beth@epa.gov]  
**Sent:** 3/4/2019 4:07:20 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** FW: No call-in for all hands

*Beth*

Beth Edwards  
U.S. EPA New England  
5 Post Office Square, Suite 100 (OEP06-1)  
Boston, MA 02109-3912  
617-918-1840

---

**From:** Feuerbach, MaryJo  
**Sent:** Monday, March 4, 2019 10:43 AM  
**To:** R1 OEP Watersheds and NPS Unit Emp <R1OEPWatershedsandNPSUnitEmp@epa.gov>  
**Subject:** Fwd: No call-in for all hands

FYI.

Sent from my iPhone

Begin forwarded message:

**From:** "Colarusso, Phil" <colarusso.phil@epa.gov>  
**Date:** March 4, 2019 at 10:41:50 AM EST  
**To:** "Pryor, Margherita" <Pryor.Margherita@epa.gov>, "Lyons, Regina" <Lyons.Regina@epa.gov>, R1 OEP Oceans and Coastal Protection Unit Emp <R1OEPOceansandCoastalProtectionUnitEmp@epa.gov>  
**Cc:** "Feuerbach, MaryJo" <feuerbach.maryjo@epa.gov>  
**Subject:** RE: No call-in for all hands

If I had to guess, I would say Ann's quotes are probably what sent Mr. Mercer back to Maine. The power of the spoken word!

---

**From:** Pryor, Margherita  
**Sent:** Monday, March 04, 2019 10:14 AM  
**To:** Lyons, Regina <Lyons.Regina@epa.gov>; R1 OEP Oceans and Coastal Protection Unit Emp <R1OEPOceansandCoastalProtectionUnitEmp@epa.gov>  
**Cc:** Feuerbach, MaryJo <feuerbach.maryjo@epa.gov>  
**Subject:** RE: No call-in for all hands

ARE YOU KIDDING ME!!!! ???? Maybe he read the piece in Inside EPA? Here it is below.

**Critics Fear EPA Region 1 Chief Will Exacerbate Rollbacks, Staff Attrition**  
March 01, 2019

The Trump administration has appointed former Maine environment chief Paul Mercer as the new EPA Region 1 administrator covering New England, drawing fire from environmentalists who fear his work

under a conservative governor will bolster the agency's deregulatory agenda that has seen the region's staff shrink by attrition.

EPA announced the appointment of Mercer, a head of the Maine Department of Environmental Protection (DEP) under former Gov. Paul LePage (R-ME), in a Feb. 28 email to staff of Region 1, covering Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

Environmentalists fear that Mercer's work as part of LePage's deregulatory agenda will ensure he will push ahead with Trump administration regulatory rollback priorities at Region 1.

"The whole LePage administration, their whole M.O. was not to enforce environmental laws," says Kyla Bennett, director of science policy for the Public Employees for Environmental Responsibility (PEER).

Still, some environmentalists in the state believe that Mercer will be better than other potential Region 1 candidates would have been, hoping his work at DEP encourages him to focus on strict environmental protection.

The notice highlights Mercer's work for private engineering firms, and says he supports aligning EPA's Office of Research and Development (ORD) research with state needs and resources.

"Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America," the email says, adding that his past successes include reducing emissions from a Bucksport, Maine paper mill, while also extending the life of the mill.

"He's long promoted the need for EPA's Office of Research and Development to align with state needs and resources, and has been a strong proponent of ORD scientists visiting states as a way to meet those needs."

But environmentalists are wary of Mercer's appointment, which takes effect March 4. They note that Region 1 is facing staff attrition from retirees who have not been replaced, and current and former workers have told Boston radio station WGBH that dwindling staff is increasing workloads and hurting morale.

"I'm suspicious of anybody that the Trump administration appoints, and I'm doubly suspicious of anybody that comes out of the LePage administration," Bennett said.

LePage officials sparred with the Obama EPA over water quality standards. In the Fall of 2015, prior to Mercer's appointment as commissioner, MDEP sued EPA over the agency's disapproval of the state's updated water quality standards, claiming EPA "unlawfully usurps" the state's role, a position supported by industry groups.

Mercer replaces former Region 1 Administrator Alexandra Dunn, who was recently sworn in as EPA's new toxics chief.

PEER's Bennett tells Inside EPA that prior to Dunn's appointment, advocates in New England feared that someone from the LePage administration might land the job. "This is Region 1's worst fears coming true."

### **Region 1 Attrition**

But other environmentalists in the region in interviews with WGBH news, note that Mercer has achieved some environmental successes while working for LePage's GOP administration.

"Given who our president is right now, and the harsh anti-environmental record that they've been pursuing, I think Paul Mercer comes in with a strong appreciation generally for the importance of a clean environment, clean air, clean water, the role of EPA," Pete Didisheim, advocacy director for the Natural Resources Council of Maine told the station.

"And I would hope that he would stand up for [those] values in that mission on behalf of the New England states."

Mercer will have to address ongoing attrition of Region 1's workforce, which agency employees have suggested is related to the implementation of Trump's deregulatory agenda.

Last month, WGBH reported that Region 1 is shrinking from attrition as retiring staff have not been replaced, and that remaining workers are increasingly frustrated with growing workloads.

Several recently retired and current Region 1 employees told the station that dwindling staff numbers -- 60 people have retired from Region 1's Boston office since 2017 -- and the Trump administration's deregulatory agenda is hurting office morale.

"It's very demoralizing," said Ann Rodney, who plans to retire this year. "There's a question, 'Why are we here? What is our mission?'"

"I don't think it's any secret to say that we feel like certainly we're in the crosshairs," Margherita Pryor, who has worked for EPA for nearly 40 years, told the station.

In the announcement to staff, EPA highlights Mercer's career working for private engineering firms and his expertise in renewable energy.

"Using professional and personal ethics, collaboration, open communication and common sense, he encouraged innovation and businesses to support a sustainable economy while protecting the State's valuable environment," the statement says. -- Dave Reynolds ([dreynolds@iwpnews.com](mailto:dreynolds@iwpnews.com))

Margherita Pryor  
U.S. EPA Region 1 New England  
5 Post Square, Suite 100  
Mail Code OEP06-1  
Boston MA 02109- 3912  
617-918-1597  
[pryor.margherita@epa.gov](mailto:pryor.margherita@epa.gov)

Begin with the end in mind.

-----Original Message-----

From: Lyons, Regina  
Sent: Monday, March 04, 2019 10:04 AM  
To: R1 OEP Oceans and Coastal Protection Unit Emp  
<[R1OEP0ceansandCoastalProtectionUnitEmp@epa.gov](mailto:R1OEP0ceansandCoastalProtectionUnitEmp@epa.gov)>  
Cc: Feuerbach, MaryJo <[feuerbach.maryjo@epa.gov](mailto:feuerbach.maryjo@epa.gov)>  
Subject: Re: No call-in for all hands

The big announcement was that Paul is no longer taking the RA job...

> On Mar 4, 2019, at 9:51 AM, Lyons, Regina <[Lyons.Regina@epa.gov](mailto:Lyons.Regina@epa.gov)> wrote:

>

> Hi All,

>

> Lynne confirmed there is no call-in for the all hands today, which is unfortunate since most of us are remote.

>

> Also I'm not sure why the name change went from "RA meet and Greet" to "All Hands"...but maybe the New RA isn't in?

Message

**From:** Kristen Conroy [conroy.kristen@epa.gov]  
**Sent:** 3/4/2019 2:17:08 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** Daily News Clips, Monday, March 4, 2019



## Print/Online News

### EPA's plan to regulate chemical contaminants in drinking water is a drop in the bucket

**The Advocate Online** | 03/01/2019 (2 days, 12 hours ago)

...After more than a year of community meetings and deliberations, the U.S. **Environmental Protection Agency** announced in February 2019 that...

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### Trump pours gas on the EPA, then lights the match

**The Boston Globe** | 03/02/2019 (1 day, 10 hours ago)

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...Andrew Wheeler, a former coal and energy lobbyist, as the new head of the **Environmental Protection Agency**. It's worth stepping back for...

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## Thank you, Governor Janet Mills

**The Boston Globe** | 03/03/2019 (10 hours, 17 minutes ago)

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*BODY*Massachusetts owes Governor Janet Mills of **Maine** a heartfelt thank you. After just two months in office, Mills has thrown her support...

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## Former Maine DEP commissioner to head EPA's New England office

**Central Maine Today Media** | 03/01/2019 (3 days, 4 hours ago)

...23:34:22+00:00 A Boston TV station is reporting that Paul Mercer, DEP chief under Gov. Paul LePage, has been tapped to lead the...

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## Septic tanks and lakes

**Central Maine Today Media** | 03/02/2019 (1 day, 22 hours ago)

2019-03-02 09:00:58+00:00 Letter **Maine's** lakes are the crown jewels of its landscape and perhaps the most valued economic resource out...

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## Senate confirms acting EPA chief for permanent role

**Concord Monitor Online** | 03/01/2019 (3 days, 7 hours ago)

FILE - In this Dec. 11, 2018 file photo, Acting **EPA** Administrator Andrew Wheeler at **EPA** headquarters in Washington. (AP Photo/Cliff...

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## Trump's climate panel waste of time and money

**Day Online** | 03/01/2019 (3 days, 8 hours ago)

...minority and self-serving view that using fossil fuels is not fueling **climate change**, I just wonder who will be footing the bill for...

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## R.I. Environmentalists Seek Action, Want Accountability on Cutting Carbon Emissions

**EcoRI** | 03/01/2019 (2 days, 15 hours ago)

.../>Videos and text by TIM FAULKNER/**ecoRI** News staff PROVIDENCE - **Rhode Island** is behind neighboring states when it comes to...

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## Shaheen, Hassan co-sponsor PFAS bill

**Foster's Daily Democrat Online** | 03/04/2019 (6 hours, 7 minutes ago)

...declare PFAS chemicals hazardous substances that are eligible for federal **cleanup** funds. The lead sponsor of the bill, which is called The...

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## Andrew Wheeler, Who Continued Environmental Rollbacks, Is Confirmed to Lead E.P.A.

**InsideClimate News** | 03/01/2019 (2 days, 18 hours ago)

...on Thursday confirmed Andrew R. Wheeler to be the administrator of the **Environmental Protection Agency**, giving oversight of...

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## DEP orders asbestos cleanup at Framingham condos

**MetroWest Daily News** | 03/01/2019 (2 days, 10 hours ago)

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...alerted the federal Occupational Safety and Health Administration and **Massachusetts** Department of Environmental Protection of the...

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## EPA to begin reviewing 3 R.I. Superfund site cleanups this year

**Providence Business News Online** | 03/01/2019 (3 days, 2 hours ago)

EconomyGovernmentNatural ResourcesSubscriber OnlyNews Briefs **EPA** to begin reviewing 3 R.I. **Superfund** site cleanups this...

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## Tewksbury DPW addressing stormwater

**Tewksbury Town Crier** | 03/04/2019

...of finishing up its stormwater management plan per the 2016 EPA Small **MS4 Permit**, at which point it will reach out to the public for...

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## Welch appoints Rebecca Ellis to lead Vermont office

**Vermont Business Magazine Online** | 03/01/2019 (2 days, 16 hours ago)

**Vermont** Business Magazine Representative Peter Welch (D-**Vermont**) announced today that Rebecca Ellis of Waterbury Center will join his...

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## Trump pours gas on the EPA, then lights the match

**The Boston Globe** | 03/02/2019

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BODYAs a regular commentator on American politics, I have found it a persistent challenge to capture the insanity, discombobulation, and enduring damage to America that is being created by our current political moment.

This week, however, the US Senate made my job a bit easier.

Today, the dangers of global warming have perhaps never been clearer and more alarming. The evidence of its impact can be seen across the country, from increasingly intense weather events, which last year cost the economy close to \$100 billion, to greater coastal flooding, loss of forests, and even the spread of ticks carrying Lyme Disease.

Democrats are finally speaking with urgency about how to deal with the challenges of climate change and are proposing ambitious legislation to tackle this issue, which threatens the long-term inhabitability of our planet.

Yet, with all that happening, the GOP-controlled Senate earlier this week confirmed Andrew Wheeler, a former coal and energy lobbyist, as the new head of the **Environmental Protection Agency**.

It's worth stepping back for a second to ruminate over what that means.

Wheeler has literally spent years trying to roll back environmental regulations intended to keep our air and water clean and protect Americans from harmful pollutants. Putting Wheeler in charge of the nation's key environmental agency isn't just asking the fox to check in on a few hens; it's like asking the fox to create new national enclosure standards for all of America's chickens.

Wheeler's ascendancy, while depressing, wasn't surprising. After all, the president of the United States not only believes that global warming is a hoax, but he regularly questions whether it's happening whenever it's cold outside.

Since taking office, his administration has declared war on environmental regulations. The **EPA** has worked to weaken fuel-efficiency and pollution standards for cars; allow coal plants and power plants to spew more greenhouse gases, including methane, into the air; water down laws intended to protect consumers from deadly chemicals; curtail federal protection of waterways; and increase oil and gas drilling. Criminal prosecutions by the agency have fallen to their lowest level in 30 years.

Under Wheeler, these policies will continue. While the Trump administration constantly argues that slashing environmental safeguards is essential for spurring the economy (which is contradicted by increasing insurance claims and direct costs due to climate change-induced fires, hurricanes, and floods), polls suggest that Americans are, in fact, much more enlightened. By a nearly 20-point margin, according to Gallup, Americans want to see environmental protection given priority even if it risks temporarily undermining economic growth.

Even strong majorities (including Republicans) support the Democratic plan for a Green New Deal.

Electoral advantage doesn't explain the newfound political attention to this issue. Rather, it's become impossible to ignore the overwhelming evidence which suggests that the planet faces an increasingly dire future if mankind doesn't start addressing climate change now.

In the fall, an ominous UN report said that if greenhouse gas emissions continue to rise at their current pace, it

---

will lead to mass food shortages and wildfires, unprecedented coastal flooding, intensifying droughts, and a reversal of the historic gains made in reducing global poverty. The damage to the world economy will run into the tens of trillions of dollars. The Trump administration's own reports are similarly bleak, with forecasts of potentially catastrophic damage to the US economy and quality of life for millions of Americans.

That we all have this scientific evidence at our fingertips, yet the president and Senate Republicans are still content to put someone like Wheeler in charge of the **EPA**, is not just stupefying. It's the kind of move that risks imperiling the livelihood and lives of millions of Americans. At a moment when the planet faces the greatest modern peril, perhaps the only political party in the world that disbelieves the global scientific consensus on climate change is driving environmental policy for the world's most influential nation.

If there is any silver lining to be found, it's that undoing environmental regulation is not so easy. New **EPA** rules will be met with a barrage of lawsuits from environmental groups and Democratic attorneys general potentially affected by the changes.

While Wheeler's efforts may be slowed, precious time will be lost.

All of this is a reminder that climate change is not going away. And as long as Republicans are in charge in Washington, the problem will go unchecked. For voters who want to bequeath their children and grandchildren a habitable planet, this is something to keep in mind the next time they head to the polls.

Michael A. Cohen's column appears regularly in the *Globe*. Follow him on Twitter @speechboy71.

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## Thank you, Governor Janet Mills

*The Boston Globe* | 03/03/2019

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BODYMassachusetts owes Governor Janet Mills of **Maine** a heartfelt thank you. After just two months in office, Mills has thrown her support behind a plan to run a power-transmission line through western **Maine** to feed Canadian **hydropower** into the New England electrical grid.

The so-called New England Clean Energy Connect is a big part of **Massachusetts'** plan to increase the clean electricity in our power mix and reduce greenhouse gas emissions. Bestowing her blessing is a gutsy move for the new **Maine** governor, for several reasons. Mills hails from Farmington, a western **Maine** university community through which the transmission line would run. In her area of the state, the project is far from popular, to put it euphemistically.

Further, the power the transmission lines will carry isn't for **Maine** itself, but rather for **Massachusetts** (and possibly, at some later date, other New England states). But the 145-mile-long corridor, which would run from the **Maine**-Quebec border south to tie into the New England grid in Lewiston, will require cutting a 150-foot-wide swath through 53 miles of **Maine's** north woods; the rest of its length will be through existing power corridors, which will have to be widened.

For her efforts, Mills won herself an attack from anonymously funded TV and social media ads that accuse her of "switching sides" now that Central **Maine** Power "is offering a backroom deal." That's unfair. In a statement in response, Mills spokesman Scott Ogden noted, correctly, that Mills had been skeptical during last year's

---

campaign because she didn't think the plan offered enough benefits for **Maine**, but that the new proposal is very different.

He's right. Last year, the **Maine** incentive package was valued at less than \$25 million. CMP's new plan is worth some \$258 million over 40 years. The new total includes a \$50 million Low-Income Customer Benefits Fund, \$140 million in rate relief for **Maine** businesses, \$15 million to help with heat-pump purchases, another \$15 million to subsidize electric cars and charging stations, and \$10 million for high-speed broadband for communities that host the transmission corridor. That's a fair deal for **Maine**. And it comes atop the significant concession CMP offered last fall when it committed to tunnel under, rather than run lines over, the Kennebec River Gorge, a mecca for whitewater rafters in **Maine**.

But the new benefits have hardly resolved the controversy over the corridor in **Maine**. The Natural Resources Council of **Maine**, a pillar of **Maine's** environmental establishment, remains opposed, as does an array of other groups.

The state's Public Utilities Commission will make a decision on the project in the next month or so. Other regulators also still need to bless the project, and since it crosses an international border, it needs approval from the Trump administration, too. Still, having Mills's support matters. She made the call here. Yes, this project will have some negative environmental effects on **Maine**, but as Mills said when giving it her approval recently, "[T]his is a project that is, on balance, worth pursuing."

However, that conclusion was hardly a slam dunk for any politician, let alone one from western **Maine**. Here, Mills has risen above the NIMBYism that can be almost reflexive on projects like this. Instead of taking the easy way out, she has put some of her political capital on the line to boost the broader clean-energy cause.

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## **DEP orders asbestos cleanup at Framingham condos**

**MetroWest Daily News** | 03/01/2019

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FRAMINGHAM - After starting demolition without a necessary permit, developers adding more housing to the Chapel Hill Condominiums are under watch by the state Department of Environmental Protection as they remove asbestos found at the site.

City inspectors discovered on Jan. 17 that renovations were underway to the ground floor of the Chapel Hill East building at 1500 Worcester Road.

Developers Gregory and Russell Nelson are converting office suites inside the mid-rise condo building into six or more residential units.

The project was approved by the city Planning Board last year, though under the board's decision, owners were required to attend a pre-construction meeting with the city, and obtain necessary sign-offs from the building commissioner.

"The contractor they hired just went in and started tearing everything apart without permits," Building Commissioner Michael Tusino said last week.

The city ordered RSG Group LLC, to cease all activity, apply for a building permit and provide a full set of construction documents. It also asked RSG to test for potential contamination.

"We asked that someone do some asbestos testing because some of the material looks like it could be asbestos," Tusino said. "After they tested it, they found that it was positive."

Asbestos, a thin fiber material, has long been used in the building and construction industries for insulation, roofing, fireproofing and sound absorption. It's now heavily regulated because exposure is known to cause lung cancer and other health problems.

After conducting an inspection, city officials alerted the federal Occupational Safety and Health Administration and **Massachusetts** Department of Environmental Protection of the circumstances. The DEP has since taken control of the project, ordering developers to hire an asbestos contractor to develop a plan to remove any contaminated material while renovations continue.

RG Environmental, a contractor from Jamaica Plain, will carry out the abatement work, which includes decontaminating the entire first-floor construction area. Dedham-based FLI Environmental will monitor **air quality** in the building, and another company will haul contaminated waste to a landfill in Rochester, **New Hampshire**.

The DEP approved the plan on Friday. The state plans to inspect the site before and after the work is done. The area impacted by the construction work has been sealed, and the state has no information indicating asbestos fibers traveled outside of that area, according to DEP spokesman Edmund Coletta.

Responding to a request from the newspaper for the results of the asbestos testing, Coletta wrote that the case is a "potential enforcement matter," and DEP doesn't typically share test results while conducting an investigation.

"That said, if we had information that other tenants should be relocated until the abatement occurred, we would work with the owner and the municipal officials to ensure that such relocation occurred," Coletta wrote. "We see no need for relocation based on our review to date."

The two Chapel Hill properties were developed in the mid-1960s. The buildings are almost entirely residential, though seven units in the eastern complex were used for business operations.

RSG is converting five of the seven office suites into one- and two-bedroom condos, measuring between about 800 square feet and 1,200 square feet. Developers will add to an existing stock of 180 units in the building.

Determining whether asbestos is present is a key step in the city's review process when it issues building permits. Had they followed the city's procedure, developers and their contractor would have been required to show proof of asbestos remediation before starting construction, Tusino said.

Responding to questions from the Planning Board earlier this year, developer Gregory Nelson said he and his partner were unaware that their contractor didn't have the necessary permits.

The licensed construction supervisor at the site was contractor Walter Vogel, of Everett, according to a letter sent by the Inspectional Services Division. Nelson said the contractor has since been fired.

In an interview Tuesday, he stressed that testing came back negative for asbestos contamination outside of the five commercial suites being renovated. Safety remains a priority, and RSG is complying with all requests from the state, he said.

"We are doing what we can to try to make the situation better for everybody," Nelson said, "and right now, we're working with all the necessary departments that have to be involved, and we're doing everything exactly the way that we're supposed to be doing it."

Jim Haddadin can be reached at 617-863-7144 or [jhaddadin@wickedlocal.com](mailto:jhaddadin@wickedlocal.com) Follow him on Twitter: [@JimHaddadin](https://twitter.com/JimHaddadin).

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Message

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**From:** Melanson, Kate [Melanson.Kate@epa.gov]  
**Sent:** 2/28/2019 2:49:57 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** FW: Paul Mercer

Hi Dave –

Heads up in case any media inquires come in.

Thanks!  
-Kate

---

**From:** Madore, David <David.Madore@maine.gov>  
**Sent:** Thursday, February 28, 2019 9:14 AM  
**To:** Melanson, Kate <Melanson.Kate@epa.gov>  
**Subject:** RE: Paul Mercer

Yes, I will definitely refer all media to you. Thanks!!

---

**From:** Melanson, Kate [<mailto:Melanson.Kate@epa.gov>]  
**Sent:** Thursday, February 28, 2019 8:59 AM  
**To:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Subject:** RE: Paul Mercer

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.  
Nothing has gone out from the agency, and we are hearing it may not go until Monday.

If I see it sooner, I'll send it your way. Feel free to refer any media inquiry's to us.

Thanks!  
-Kate

---

**From:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Sent:** Thursday, February 28, 2019 8:55 AM  
**To:** Melanson, Kate <[Melanson.Kate@epa.gov](mailto:Melanson.Kate@epa.gov)>  
**Subject:** RE: Paul Mercer

Thanks for checking!!

---

**From:** Melanson, Kate [<mailto:Melanson.Kate@epa.gov>]  
**Sent:** Thursday, February 28, 2019 8:54 AM  
**To:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Subject:** RE: Paul Mercer

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.  
Nothing external that I've seen. I'll check and get back to you.

Thanks!

-Kate

---

**From:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>

**Sent:** Thursday, February 28, 2019 8:51 AM

**To:** Melanson, Kate <[Melanson.Kate@epa.gov](mailto:Melanson.Kate@epa.gov)>

**Subject:** Paul Mercer

Hi Kate,

Press in Maine is starting to pick the announcement about Paul but I am unable to find the press release. Has something formal gone out yet??

Thanks!!

David R. Madore

Director of Communications, Education & Outreach/Legislative Liaison

Maine Department of Environmental Protection

(207) 287-5842 (desk)

[www.maine.gov/dep](http://www.maine.gov/dep)



Message

---

**From:** Deegan, Dave [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5D9B02A32ED4C05879FA6730A89158D-DEEGAN, DAVE]  
**Sent:** 2/28/2019 10:14:26 PM  
**To:** Palmer, Margo [Palmer.Margo@epa.gov]  
**CC:** Ng, Jun [Ng.Jun@epa.gov]  
**Subject:** Re: Announcing our new Regional Administrator - Paul Mercer

Yes, and not sure of exact timing. Thanks for flagging!

Thanks,  
Dave

-----  
Dave Deegan  
US EPA, Region 1  
617.918.1017 - office  
617.594.7068 - mobile  
[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)

On Feb 28, 2019, at 4:09 PM, Palmer, Margo <[Palmer.Margo@epa.gov](mailto:Palmer.Margo@epa.gov)> wrote:

Hi Dave,

I assume that you will put together the bio for the website. Should this be posted Monday, or....

Thanks,  
Margo

617.918.1949  
857.998.9043 cell

---

**From:** Szaro, Deb  
**Sent:** Thursday, February 28, 2019 7:47 AM  
**To:** R1 ALLEPANE EPA Employees Only <[R1\\_ALLEPANEPAONLY@epa.gov](mailto:R1_ALLEPANEPAONLY@epa.gov)>  
**Subject:** Announcing our new Regional Administrator - Paul Mercer

I'm delighted to inform you that Paul Mercer has been appointed as our Regional Administrator and will start on Monday, March 4<sup>th</sup>. <!--[if !vml]--> <image002.jpg><!--[endif]-->

Paul is a seventh generation Mainer and lifelong outdoorsman who grew up in Bucksport, Maine. He is a graduate of Maine Maritime Academy and began his working career traveling the globe as a Marine Engineer aboard US merchant vessels. Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America. He has enjoyed successes such as achieving major reduction of emissions and life extension at the paper mill in Bucksport, Maine as a lead developer of the Bucksport Energy Project.

A member of the senior management team at Maine Maritime, Paul held positions as Associate Professor and Department Chair within the Engineering Department, and Assistant to the President for Sustainability. He also served as Director of Facilities, Vice President of Advancement and Vice President

of Operations. He was instrumental in promoting innovation and environmental initiatives while at the Academy.

As Commissioner of the Department of Environmental Protection until last October, Paul combined professional experience and dedication to protecting Maine's natural resources to promote the needs of the State. Using professional and personal ethics, collaboration, open communication and common sense, he encouraged innovation and businesses to support a sustainable economy while protecting the State's valuable environment. He's long promoted the need for EPA's Office of Research and Development to align with state needs and resources, and has been a strong proponent of ORD scientists visiting states as a way to meet those needs.

Paul's personable, collaborative leadership style shined through at regional meetings of state environmental commissioners, where he has earned their respect and support. Paul is committed to furthering EPA's mission and working closely with our state partners.

Paul is a dedicated family man. He and his wife called Penobscot, Maine their home and they have two grown children and a grandchild.

Please join me for an All Hands - Meet and Greet for Paul at 10:00 am on Monday, March 4<sup>th</sup> in Leighton Hall with video to the Kennebec at the Lab.

## Appointment

---

**From:** Deegan, Dave [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5d9b02a32ed4c05879fa6730a89158d-Deegan, Dave]  
**Sent:** 2/28/2019 4:41:10 PM  
**To:** R1 Events [R1\_Events@epa.gov]  
**Subject:** Accepted: Meet and Greet with our new RA, Paul Mercer  
**Location:** Leighton Hall with VTC to the Kennebec Room  
**Start:** 3/4/2019 3:00:00 PM  
**End:** 3/4/2019 4:00:00 PM  
**Show Time As:** Busy

Message

---

**From:** Deegan, Dave [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5D9B02A32ED4C05879FA6730A89158D-DEEGAN, DAVE]  
**Sent:** 3/4/2019 7:45:54 PM  
**To:** Craig LeMoult [craig\_lemoult@wgbh.org]  
**BCC:** Gutro, Doug [Gutro.Doug@epa.gov]; Bender, Emily [Bender.Emily@epa.gov]; Senn, John [Senn.John@epa.gov]  
**Subject:** Re. Paul Mercer

Hi Craig,

EPA's HQ office is handling calls on Mr. Mercer. Please reach out to [press@epa.gov](mailto:press@epa.gov) and someone there will be able to get you a statement or something.

Sorry I can't be more helpful on this!

Best Regards,  
Dave

~~~~~

Dave Deegan  
U.S. EPA, New England Regional Office  
Office of Public Affairs  
Media Relations | Social Media | Web Content  
phone: 617.918.1017 | mobile: 617.594.7068  
email: [deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)



## Appointment

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**From:** R1 Events [R1\_Events@epa.gov]  
**Sent:** 2/28/2019 3:33:11 PM  
**To:** R1 Events [R1\_Events@epa.gov]  
**CC:** R1 ALLEPANE [R1\_ALLEPANE@epa.gov]  
  
**Subject:** Meet and Greet with our new RA, Paul Mercer  
**Location:** Leighton Hall with VTC to the Kennebec Room  
  
**Start:** 3/4/2019 3:00:00 PM  
**End:** 3/4/2019 4:00:00 PM  
**Show Time As:** Tentative

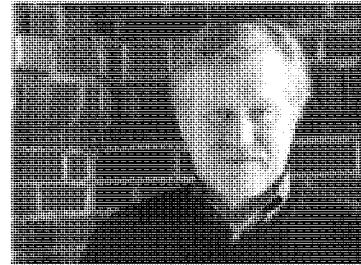
Please join us for a meet and greet with our new RA Paul Mercer.

Light refreshments will be available in Leighton Hall. We will have water and orange juice available. Please bring your own coffee. As always, please bring your own cup to keep our waste down.

---

Paul Mercer has been appointed as our Regional Administrator and will start on Monday, March 4<sup>th</sup>.

Paul is a seventh generation Mainer and lifelong outdoorsman who grew up in Bucksport, Maine. He is a graduate of Maine Maritime Academy and began his working career traveling the globe as a Marine Engineer aboard US merchant vessels. Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America. He has enjoyed successes such as achieving major reduction of emissions and life extension at the paper mill in Bucksport, Maine as a lead developer of the Bucksport Energy Project.



A member of the senior management team at Maine Maritime, Paul held positions as Associate Professor and Department Chair within the Engineering Department, and Assistant to the President for Sustainability. He also served as Director of Facilities, Vice President of Advancement and Vice President of Operations. He was instrumental in promoting innovation and environmental initiatives while at the Academy.

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Paul's personable, collaborative leadership style shined through at regional meetings of state environmental commissioners, where he has earned their respect and support. Paul is committed to furthering EPA's mission and working closely with our state partners.

Paul is a dedicated family man. He and his wife called Penobscot, Maine their home and they have two grown children and a grandchild.



Message

---

**Sent:** 3/6/2019 5:26:34 PM  
**To:** Jaffe, Seth [SJaffe@Foleyhoag.com]  
**Subject:** RE: Region 1 Administrator Quits Before He Starts

Hi Seth,

Can't comment on the allegations in the Inside EPA article because I haven't heard any explanation why, but it is correct that Mercer decided not to accept the position.

---

**From:** Jaffe, Seth <SJaffe@Foleyhoag.com>  
**Sent:** Wednesday, March 06, 2019 12:16 PM  
**To:** Dierker, Carl <Dierker.Carl@epa.gov>  
**Subject:** FW: Region 1 Administrator Quits Before He Starts

Carl:

I saw this in Inside EPA, but haven't seen anything in the national press or other trade press. Is it correct?

Thanks.

Seth

**FOLEY  
HOAG** LLP

Seth D. Jaffe | **Partner**

Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

617 832 1203 phone  
617 832 7000 fax  
617 688 5453 mobile

[www.foleyhoag.com](http://www.foleyhoag.com)  
Read the Law and the Environment blog at [lawandenvironment.com](http://lawandenvironment.com).

---

## Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure March 04, 2019

Former Maine environment chief Paul Mercer has declined the role of EPA Region 1 administrator on the day he was due to start the position, following environmentalists' criticism that his work under the

state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

On the morning of March 4, when Mercer was scheduled to join the agency, Acting Region 1 Administrator Deb Szaro told staff that Mercer had declined the job, according to two people familiar with the announcement.

The sources said they did not know the reason for Mercer's decision.

But the reversal comes after Szaro announced Mercer's appointment to lead Region 1 in a Feb. 28 email that highlighted Mercer's work for private engineering firms and said he would support aligning EPA's Office of Research and Development research with state needs and resources.

"Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America," the email says, adding that his past successes include reducing emissions from a Bucksport, Maine paper mill, while also extending the life of the mill.

Environmentalists expressed skepticism about Mercer's appointment, citing his leadership of the Maine Department of Environmental Protection (MDEP) during the tenure of former conservative Gov. Paul LePage (R), who advocates say failed to adequately enforce environmental laws.

LePage officials also sparred with the Obama EPA over water quality standards. In the fall of 2015, prior to Mercer's appointment as commissioner, MDEP sued EPA over the agency's disapproval of the state's updated water quality standards, claiming EPA "unlawfully usurps" the state's role, a position supported by industry groups.

Kyla Bennett, director of science policy for the Public Employees for Environmental Responsibility (PEER) told Inside EPA March 1 in response to news of Mercer's appointment to lead EPA that "The whole LePage administration, their whole M.O. was not to enforce environmental laws.

"I'm suspicious of anybody that the Trump administration appoints, and I'm doubly suspicious of anybody that comes out of the LePage administration," she added.

Still, some environmentalists in the region said Mercer would have been better than other potential Region 1 candidates, suggesting his work at MDEP would encourage him to focus on strict environmental protection.

"Given who our president is right now, and the harsh anti-environmental record that they've been pursuing, I think Paul Mercer comes in with a strong appreciation generally for the importance of a clean environment, clean air, clean water, the role of EPA," Pete Didisheim, advocacy director for the Natural Resources Council of Maine, told the Boston radio station WGBH news.

"And I would hope that he would stand up for [those] values in that mission on behalf of the New England states."

Mercer would have replaced former Region 1 Administrator Alexandra Dunn, who was recently sworn in as EPA's new toxics chief.

Any new Region 1 administrator will have to address ongoing attrition of the region's workforce, which some agency employees have suggested is related to the implementation of President Donald Trump's deregulatory agenda.



Last month, current and former Region 1 staff told WGBH news that the region is shrinking from attrition as retiring staff have not been replaced, and that remaining workers are increasingly frustrated with growing workloads.

"I don't think it's any secret to say that we feel like certainly we're in the crosshairs," Margherita Pryor, who has worked for EPA for nearly 40 years, told the station. -- Dave Reynolds  
([dreynolds@iwpnews.com](mailto:dreynolds@iwpnews.com))

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**From:** Kristen Conroy [conroy.kristen@epa.gov]  
**Sent:** 3/8/2019 12:01:24 PM  
**To:** Dierker, Carl [Dierker.Carl@epa.gov]  
**Subject:** Inside EPA News Clips, Friday, March 8, 2019



## Print/Online News

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### MERCER, EPA REGION 1 ADMINISTRATOR PICK, WITHDRAWS AT START OF TENURE

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*Posted March 04, 2019 Former **Maine** environment chief Paul Mercer has declined the role of **EPA Region 1** administrator on the...*

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### EASTERN STATES, SENATE DEMOCRATS FAULT EPA INTERSTATE AIR POLLUTION POLICY

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*...2019 Eastern states and Senate Democrats are attacking what they say is **EPA's** inadequate approach to policies for curbing interstate...*

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**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*...and avoid unintended consequences," she said. Anastasio commended **EPA** Administrator Andrew Wheeler's Oct. 30 memo urging agency...*

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## EPA TOUTS 10-YEAR TRI CUTS TO BOLSTER ROLLBACKS DESPITE ANNUAL INCREASE

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*Posted March 05, 2019 Top EPA officials touted just-released analysis of the Toxic Release Inventory (TRI), which show a decline in...*

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## EPA TOUTS ENFORCEMENT DEFERENCE POLICY BUT ALSO EYES STATE 'ASSISTS'

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*...a lot of these violations just sit," Eric Schaeffer, executive director of Environmental Integrity Project and a former top EPA...*

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## SENATE ENERGY PANEL SEEKS TO SPUR 'PRAGMATIC' CLIMATE POLICY DISCUSSIONS

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*...who has long supported coal and other fossil fuels and opposed Obama EPA GHG rules, said that any climate legislation must address the...*

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## WATER SECTOR'S REPORT COULD BOOST EPA BID TO CONSOLIDATE SMALL UTILITIES

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*...steps to encourage the consolidation of small utilities, which could boost EPA's bid for increased collaboration among utilities and help...*

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## ESCALATING CONTROVERSY, MCCOLLUM SEEKS EPA REGION 5 PERMIT COMMENTS

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*...McCollum (D-MN), chair of the appropriations subcommittee that oversees **EPA's** budget, is urging the agency to release Region 5 staffers'...*

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## DISTRICT JUDGE FINDS EPA LIABILITY UNDER SUPERFUND FOR GOLD KING MINE SPILL

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*...is "mounting criticism" of the Chevron principle that gives primacy to EPA and other agencies' interpretations of unclear laws, raising...*

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## DEMOCRATS SEEK INQUIRIES AFTER GAO FINDS EPA DROPPED IRIS ASSESSMENTS

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*Posted March 04, 2019 Democratic lawmakers are questioning EPA's decision to shrink its influential risk assessment program and seeking an...*

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## EPA URGES IRS TO ALIGN TAX LAW INCENTIVES WITH BROWNFIELDS DEFINITION

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*Posted February 28, 2019 EPA's Office of Brownfields and Land Revitalization (OBLR) is urging the Internal Revenue Service (IRS) to align...*

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## FORMER CASAC CHAIR ALLEGES 'PROCEDURAL IRREGULARITIES' IN NAAQS REVIEWS

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*Posted February 28, 2019 A former chairman of EPA's Clean Air Scientific Advisory Committee (CASAC) is alleging "procedural..."*

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## JUDGE REJECTS NOVEL CLAIM THAT AIR ACT FAILS TO GRANT INJUNCTIVE RELIEF POWER

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*...what sources describe as a long-shot argument that runs counter to what EPA -- and federal courts -- have successfully been doing for...*

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## SENATE GOP CONFIRMS WHEELER AS EPA CHIEF, AMID DEMOCRATS' ATTACKS

**Inside EPA** | 03/07/2019 (8 hours, 1 minute ago)

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*... Senate Republicans have voted to confirm Andrew Wheeler to be the Trump EPA's second permanent administrator, after the chamber's...*

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## BIPARTISAN HOUSE BILL WOULD BOOST EPA WATER INFRASTRUCTURE FUNDING LEVELS

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*...House lawmakers has introduced legislation to boost authorized levels of EPA's clean water state revolving fund (SRF) to \$4 billion...*

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## HEARING ON PROPOSED CWA RULE PREVIEWS LEGAL ARGUMENTS ON FINAL POLICY

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*Posted March 01, 2019 Speakers at EPA's public hearing on its proposed Clean Water Act (CWA) jurisdiction rule gave early signals of how...*

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## MERCER, EPA REGION 1 ADMINISTRATOR PICK, WITHDRAWS AT START OF TENURE

*Inside EPA* | 03/07/2019

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Posted March 04, 2019

Former **Maine** environment chief Paul Mercer has declined the role of **EPA Region 1** administrator on the day he was due to start the position, following environmentalists' criticism that his work under the state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

On the morning of March 4, when Mercer was scheduled to join the agency, Acting **Region 1** Administrator Deb Szaro told staff that Mercer had declined the job, according to two people familiar with the announcement.

The sources said they did not know the reason for Mercer's decision.

But the reversal comes after Szaro announced Mercer's appointment to lead **Region 1** in a Feb. 28 email that highlighted Mercer's work for private engineering firms and said he would support aligning **EPA's** Office of Research and Development research with state needs and resources.

"Paul has combined his experience as a Principal of engineering firms in **Maine** with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America," the email says, adding that his past successes include reducing emissions from a Bucksport, **Maine** paper mill, while also extending the life of the mill.

Environmentalists expressed skepticism about Mercer's appointment, citing his leadership of the **Maine** Department of Environmental Protection (MDEP) during the tenure of former conservative Gov. Paul LePage (R), who advocates say failed to adequately enforce environmental laws.

LePage officials also sparred with the Obama **EPA** over **water quality** standards. In the fall of 2015, prior to Mercer's appointment as commissioner, MDEP sued **EPA** over the agency's disapproval of the state's updated **water quality** standards, claiming **EPA** "unlawfully usurps" the state's role, a position supported by industry groups.

Kyla Bennett, director of science policy for the Public Employees for Environmental Responsibility (PEER) told *Inside EPA* March 1 in response to news of Mercer's appointment to lead **EPA** that "The whole LePage administration, their whole M.O. was not to enforce environmental laws.

"I'm suspicious of anybody that the Trump administration appoints, and I'm doubly suspicious of anybody that comes out of the LePage administration," she added.

Still, some environmentalists in the region said Mercer would have been better than other potential **Region 1** candidates, suggesting his work at MDEP would encourage him to focus on strict environmental protection.

"Given who our president is right now, and the harsh anti-environmental record that they've been pursuing, I think Paul Mercer comes in with a strong appreciation generally for the importance of a clean environment, clean air, clean water, the role of **EPA**," Pete Didisheim, advocacy director for the Natural Resources Council of **Maine**, told the Boston radio station WGBH news.

"And I would hope that he would stand up for [those] values in that mission on behalf of the **New England**

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states."

Mercer would have replaced former **Region 1** Administrator Alexandra Dunn, who was recently sworn in as **EPA's** new toxics chief.

Any new **Region 1** administrator will have to address ongoing attrition of the region's workforce, which some agency employees have suggested is related to the implementation of President Donald Trump's deregulatory agenda.

Last month, current and former **Region 1** staff told WGBH news that the region is shrinking from attrition as retiring staff have not been replaced, and that remaining workers are increasingly frustrated with growing workloads.

"I don't think it's any secret to say that we feel like certainly we're in the crosshairs," Margherita Pryor, who has worked for **EPA** for nearly 40 years, told the station. -- Dave Reynolds (dreynolds@iwpnews.com)

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## EASTERN STATES, SENATE DEMOCRATS FAULT EPA INTERSTATE AIR POLLUTION POLICY

**Inside EPA** | 03/07/2019

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Posted March 05, 2019

Eastern states and Senate Democrats are attacking what they say is **EPA's** inadequate approach to policies for curbing interstate air pollution hindering states' attainment of federal air standards, with several states ramping up technical and legal challenges to the agency while senators attack funding cuts to key emissions programs.

The push-back against the agency, highlighted at a March 5 Senate Environment & Public Works Committee (EPW) air panel hearing and in recent letters and legal filings, reflects long-running concern from downwind states that the Trump administration is not taking necessary steps to help them cut air pollution from upwind states.

Members of the **Ozone** Transport Commission (OTC) of 12 Mid-Atlantic and Northeastern states have attempted to force **EPA** to regulate upwind states' emissions through use of Clean Air Act section 126, which allows them to petition the agency for such regulations. But the administration has said it does not believe new federal action is necessary to help states attain national ambient **air quality** standards (NAAQS) and has rejected several petitions.

Sen. Tom Carper (D-DE), ranking member of the full EPW, said at the hearing that "instead of working with states on solutions to our clean air problems, Administrator [Andrew] Wheeler's **EPA** has actually made it more difficult for states, especially downwind states, to meet clean air goals," citing the section 126 petitions as an example.

**EPA's** position is underpinned by **air quality** modeling that shows almost all areas of the country, except California, attaining NAAQS for **ozone** by 2023.

But states and environmentalists suing the agency say this target date is irrelevant and unlawful, and OTC is now pushing back on **EPA's** technical analysis by calling it deeply flawed.

In a Jan. 23 letter to **EPA** air chief Bill Wehrum, OTC says **EPA's** approach wrongly predicts **ozone** NAAQS attainment, when high levels of the criteria pollutant will in fact persist beyond 2023.

OTC Chair Shawn Garvin, who also serves as Delaware's environment secretary, takes aim at **EPA's** technical analysis underpinning its recent decisions on interstate **ozone** pollution. **EPA** is showing a "discernible trend" to "present technical information in an incomplete way that favors **EPA's** preferred policy," he says.

The agency "selectively presents information that undermines and mischaracterizes the continued need for emission reductions from upwind states," Garvin says.

He singles out for criticism an Aug. 31 memo by Peter Tsirigotis, director of **EPA's** Office of **Air Quality** Planning and Standards, which "indicates that **EPA** intends to revise the threshold used to determine significant **ozone** contribution from upwind states to downwind nonattainment areas."

The Tsirigotis memo allows states to depart from the Obama **EPA's** yardstick to determine "significant contribution," which employed a threshold of 1 percent of the applicable NAAQS, combined with an assessment of cost-effective control technology options. States could now use a higher 1 ppb threshold instead, although **EPA** does not mandate this change.

Using a higher threshold could allow states to claim they have no significant contribution and escape the need to impose more-stringent control measures in good neighbor state implementation plans, which are emissions reductions plans states craft to detail how they will attain NAAQS.

The memo "weakens the effectiveness" of the good neighbor provisions and "appears to be based on faulty technical analyses," Garvin says. "The significance thresholds in the **EPA**/Tsirigotis memorandum do not provide relief" for coastal states "and will further delay public health protection to our citizens."

The OTC letter also faults the "overly optimistic" modeling **EPA** uses to predict near-universal **ozone** NAAQS attainment by 2023, which includes failings states are likely to cite in litigation over section 126 petition denials.

For example, Garvin says **EPA** ignored modeling results it did not like; used inaccurate assumptions to estimate emissions profiles for sources of **ozone** precursor chemicals; failed to properly characterize "key meteorological regimes and conditions for **ozone** transport;" assumed emissions reductions not backed by enforceable controls; failed to consider low-cost controls that can be implemented before 2023; and failed to factor in the effect of Trump **EPA** regulatory rollbacks on future emissions. Pending Litigation

Litigation over several Trump **EPA** denials of section 126 petitions is already pending in federal court, with a case in the U.S. Court of Appeals for the District of Columbia Circuit moving to the substantive briefing stage.

Also, East Coast states and environmentalists in separate March 4 filings to the D.C. Circuit set out issues they intend to raise in *State of New York, et al. v. EPA, et al.*, a lawsuit challenging **EPA's** Dec. 21 finding that 20 Eastern states will meet **EPA's** 2008 **ozone** NAAQS by 2023.

**EPA** says that attainment by these states of the 2008 NAAQS, set at 75 parts per billion (ppb) by the George W. Bush **EPA**, will satisfy the states' "good neighbor" obligation to eliminate their air pollution that contributes "significantly" to problems attaining or maintaining NAAQS in other states downwind. The agency relies on this finding to avoid further toughening of its Cross-State Air Pollution Rule (CSAPR) power plant emissions trading rule, finding that states need only meet the program's existing state emissions caps.

But East Coast states reject the agency's analysis as flawed and unrealistic. Further, **EPA** is not taking additional steps to help states meet the tougher 2015 **ozone** NAAQS, set by the Obama **EPA** at 70 ppb. The agency predicts almost all areas of the country will attain the tougher NAAQS by 2023.

States including New York, **Connecticut**, Delaware, Maryland, **Massachusetts** and New Jersey in their filing say **EPA's** reliance on 2023 as a target year to model compliance is "inconsistent with applicable precedent, and arbitrary and capricious because it failed to evaluate, consider, or account for present and ongoing nonattainment and/or maintenance problems with the 2008 **ozone** standard in downwind areas."

The states face attainment deadlines in 2021, and cost-effective measures are available now to help states meet that goal, yet **EPA** refused to consider these, the states argue.

Further, **EPA's** stance "relies on overly optimistic assumptions regarding the impacts of existing rules," relies on

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"no enforceable emission limitations," and is dependent on "state data and limited analyses," the states say. Environmentalists in their filing raise very similar arguments. Senate Hearing

At the EPW Clean Air and Nuclear Safety Subcommittee hearing, Carper and other Democrats faulted the administration's approach to air pollution. They said it appears at odds with **EPA's** stated goal of "cooperative federalism" through which it would give greater environmental policy powers to states.

Panel Republicans held the hearing to criticize the Obama administration's approach, deemed heavy-handed by GOP critics, and contrast this with the Trump administration's supposedly more state-friendly approach.

But EPW member Sen. Sheldon Whitehouse (D-**RI**) said, "I think cooperative federalism is a sham," citing in particular the agency's denial of section 126 petitions from **Connecticut**, Delaware and Maryland. "The Trump **EPA** has zero intention of listening to the states," he said.

"One state's onerous regulation is a neighboring state's clean air," he said. **Rhode Island** cannot regulate "a spewing power plant" in Pennsylvania, West Virginia or Ohio, Whitehouse said, yet **EPA** will not force upwind states to cut **ozone**-forming emissions of nitrogen oxides that contribute to coastal **ozone** problems.

Carper separately said that **EPA** is rejecting the requests to tackle interstate air pollution even as the agency seeks to reduce federal funding to states to help with their emissions reduction programs.

"So we have a situation in which Administrator Wheeler's **EPA** is denying downwind states' efforts to hold upwind states accountable for their own air pollution and expanding air pollution that crosses state borders, while taking away critical financial tools and programs that helps states address pollution," he said.

GOP senators at the hearing did not address the interstate **ozone** issues, but focused instead on alleged Obama-era federal overreach and what they said is an improved state-federal relationship under President Donald Trump's **EPA**. -- Stuart Parker (sparker@iwpnews.com)

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## ACWA BACKS EPA'S 'COOPERATIVE FEDERALISM' BUT SEEKS GREATER STATE ROLE

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Posted March 04, 2019

Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators (ACWA), is welcoming the Trump administration's "cooperative federalism" push to give states more environmental policymaking authority but urging greater state input on issues like emerging contaminants and the Clean Water Act's (CWA) scope.

"One really good thing that this administration has done is they are working to institutionalize these concepts that other administrations have been talking about," said Anastasio on a Feb. 28 Environmental Law Institute (ELI) webinar on "Rethinking the Federal State Relationship."

But while noting the agency has taken "concrete" steps toward institutionalizing cooperative federalism, she said

that room for further collaboration on environmental policies remains with ACWA and other state officials. ACWA represents many state and interstate water programs.

"We need to keep reminding our federal partners that there is a wealth of expertise at the state level" and that greater cooperation "can help us create better programs and avoid unintended consequences," she said.

Anastasio commended **EPA** Administrator Andrew Wheeler's Oct. 30 memo urging agency regional offices to generally defer to state decisionmaking and enforcement chief Susan Bodine's Jan. 22, 2018 interim guidance calling for states to take the lead in enforcement cases.

While calling for deference, both memos note that **EPA** may intervene in certain circumstances.

Anastasio outlined a range of environmental topics where **EPA** has recently collaborated with state water regulators, describing some -- such as **EPA's** approval of novel Missouri criteria for reducing nutrient pollution -- as a good examples of the Trump administration's stated goal of advancing cooperative federalism.

But she reiterated states' criticism that **EPA** is moving too slowly in setting an enforceable standard, known as a maximum contaminant level (MCL), for per- and polyfluoroalkyl substances (PFAS) contamination.

"We need a strong federal **EPA** to establish national minimum standards so that there is a level playing field across the states," Anastasio said, backing criticism from several states that **EPA's** recently announced action plan fails to set a time frame for setting a limit for some PFAS.

"It's a complicated issue but [PFAS] is one place that **EPA** can really take the lead and help states out, instead of having states developing their own standards and leading to an uneven playing field," she said.

And she warned that the agency is failing to adequately consider state input in efforts to roll back an Obama-era rule for determining the scope of the CWA.

Anastasio said **EPA** should do a better job listening to state input on ongoing efforts to craft a narrower CWA jurisdiction rule. "This is one area where we would like a little more engagement and collaboration with the agency given how monumental an issue it is for us." 'Elevating the Conversation'

ACWA's support for **EPA's** improved collaboration with states comes roughly two years after the Environmental Council of the States (ECOS) issued its white paper, "Cooperative Federalism 2.0: A Deeper Look into a Rebooted **EPA**-State Relationship," that called for **EPA** limiting its scrutiny of state programs.

The ECOS document promised that any recasting of roles will result in "equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities."

The Trump administration has strongly embraced cooperative federalism, including backing greater state implementation of federal environmental laws in **EPA's** strategic plan.

But the Trump administration's commitment has been tested -- such as in an ongoing fight with California over the states' bid to retain its waiver for setting stricter standards for vehicle emissions.

During the webinar officials with **EPA**, ECOS, and ELI said states with delegated authority to implement federal law have long taken the lead in environmental oversight, noting that is contemplated in the CWA and other laws.

But they added such cooperation is especially important in a time of declining federal resources.

"The notion that states are going to step in and take over and **EPA** is going to step back and not do anything is not realistic," Sylvia Quast, general counsel for **EPA's** Region 9 told the webinar. "We all have to work together. We don't have unlimited resources here at **EPA**, and I don't see that changing any time soon."

While cooperative federalism is not new, Anastasio credited the Trump administration for "elevating the conversation" and memorializing its principles in memos.

But she called it "too soon" to determine whether the Trump administration steps to address PFAS contamination will prove an example of cooperative federalism working, saying that "**EPA** has been a little slow" in crafting an enforceable standard for certain PFAS, despite calls from many states.

Her remarks back recent disappointment from officials in **New Hampshire**, New Jersey, North Carolina and Pennsylvania that **EPA's** recently announced action plan for addressing PFAS chemicals does not move more quickly to craft an enforceable drinking water standard, known as a known as a maximum contaminant level

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(MCL), and does not set a specific time frame for developing the standard. States' Input

She also outlined several other areas of recent state and federal collaboration where states are waiting to see the results of their input and where they would have liked to have greater input.

For example, she said that states have been working with **EPA** on developing numeric nutrient criteria for lakes and reservoirs and provided input that states hope will lead to a more robust testing model.

And while she did not detail states' positions on the CWA jurisdiction rule, ACWA and the Association of State Wetland Managers recently raised concerns that the Trump administration's proposed rollback of the Obama-**EPA's** CWA jurisdiction rule could undermine states' long-standing push to assume authority to issue dredge-and-fill **permits** under section 404 of the water law.

And in a joint Feb. 14 letter, ECOS and ACWA requested that **EPA** and the U.S. Army Corps of Engineers extend for another 60 days an April 15 deadline for input on the Trump administration's pared-back version of the CWA jurisdiction rule.

Anastasio also said the Trump administration should expand its push for cooperative federalism to agencies other than **EPA**. She noted states' recent opposition to a Corps' plan to tighten state deadlines for conducting reviews of federally permitted pipelines and other projects under section 401 of the CWA.

States "would like to see other federal agencies wrapping their arms around the concept of cooperative federalism," Anastasio said, noting disagreement with the Corp and FERC states' 401 reviews.

"I would say we have not seen as much evidence of their commitment to working with state partners as we have at **EPA**." -- Dave Reynolds (dreynolds@iwpnews.com)

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## NEW MEXICO COURT PUSH MAY LIMIT IMPACT OF KEY SUIT ON STATE PFAS POWERS

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Posted March 01, 2019

New Mexico officials are seeking to steer Defense Department litigation challenging their **permit** restrictions on per- and polyfluoroalkyl substances (PFAS) to state court, a move that if successful could limit any precedent the litigation may set on federal officials' ability to challenge such state actions.

New Mexico Environment Department (NMED) officials last month asked the U.S. District Court for the District of New Mexico to dismiss the case, United States v. NMED, saying a state court, rather than the federal district court, should hear the suit.

It called for the federal court to abstain from exercising its jurisdiction and to defer to the New Mexico Court of Appeals, where the Air Force has filed a concurrent appeal of the state Resource Conservation and Recovery Act (RCRA) **permit** at issue.

"Because there is an ongoing state court proceeding which implicates important interests and provides an adequate forum for Plaintiff's claims, this court should abstain from exercising federal jurisdiction," the motion says.

The Air Force has said it filed the concurrent appeal in state court merely "as a protective measure," but planned to seek to stay that case in deference to the federal case.

In the alternative, the state's motion asked for a "more definite statement of the alleged inconsistencies between the **permit**, RCRA and the [state Hazardous Waste Act (HWA)]."

The state's motion came after the Air Force in January sued NMED, arguing its hazardous waste definition in a recently renewed 10-year RCRA **permit** for Cannon Air Force Base should be vacated.

The state **permit** governs contamination investigation and remediation at the base, according to a fact sheet on the draft version of the **permit**. But the service charges the language, which defines hazardous waste as including contaminants such as PFAS, munitions constituents, perchlorate and other chemicals, "exceeds the scope of RCRA's waiver of sovereign immunity." While the service did not elaborate on why it believes the action is unlawful, it appears to stem from the fact that **EPA** does not regulate PFAS.

Marten Law policy adviser Nathan Frey and senior associate Jennifer Hammitt say in a Feb. 20 law post that the litigation may become a test case on attempts to limit state regulation on PFAS. The case "may provide additional insight into the viability of state regulation in the absence of federal rules."

**EPA** in a recently released PFAS action plan takes a multi-media approach to addressing widespread concern over PFAS contamination, promising to better monitor the extent of contamination and assess risks, but taking just preliminary regulatory steps on water and waste concerns.

Among **EPA**'s measures is a plan to list two specific PFAS as "hazardous substances" under the **Superfund** law – an action that would aid regulators and others in pursuing **cleanup** costs and could moot arguments the military has made in other disputes, where it has claimed it is immune from state enforcement of state laws for the release of anything other than listed **Superfund** hazardous substances.

But in the absence of **EPA** commitments, several states -- including New Jersey, **New Hampshire**, Colorado and New York -- are charging ahead and developing their own strict standards to address heightened public concerns over the spread of chemicals in drinking water systems. 'More Expeditious Solution'

Other states, like New Mexico, echoed concerns that any **EPA** action would take a long time but an NMED spokeswoman said the department will pursue whatever action it can to force the Air Force to remediate any releases in the absence of federal standards.

"In a state where PFAS is causing contamination and threatening human health today, it is critical we find a more expeditious solution in the interim. The Environment Department, in collaboration with other state agencies, will continue to use available avenues and resources to push the Air Force toward immediate action in addressing the contamination," she said.

And a spokesman for New Mexico Attorney General Hector Balderas (D) added that NMED "has the authority and the duty to protect New Mexicans, and we will vigorously defend that authority to ensure proper environmental protections for the people of New Mexico."

The **permit** challenge at Cannon came after the Air Force appeared to be dragging its feet on responding to alleged violations of state groundwater and surface water requirements at the base from PFAS used in aqueous film-forming firefighting foam for the past 40 years there.

In early December, NMED announced it was "requiring swift action" from Cannon to comply with state water requirements, contending that PFAS are at "very high concentrations" in groundwater on and off the base due to the use of firefighting foam. The state is seeking mitigation including water treatment of polluted well sources for livestock and irrigated crops and an evaluation of the feasibility of installing treatment systems on wells.

The state refused a request by the Air Force to extend the time for complying with the violation notice, because it failed to give sufficient justification, according to NMED.

Frey and Hammitt, of the Marten law firm, say that the Air Force's suit signals federal officials plan to aggressively challenge state efforts on PFAS in the absence of **EPA** standards.

"By seeking a declaratory judgment in advance of any enforcement action on the **permit**, the United States made



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its first official action in the courts to cut back on state enforcement of PFAS limits (at least as applied to federal entities)," they write.

But NMED's push to have the case decided by a state, rather than federal, court could limit the reach of any precedent.

While the state is seeking to dismiss the federal suit, it nevertheless argues that the federal lawsuit fails as a matter of law and fact because it does not allege "any specific inconsistencies between the **Permit**, RCRA, and the [New Mexico Hazardous Waste Act (HWA)]," and therefore should be dismissed.

"[I]t is impossible to ascertain from Plaintiff's Complaint which aspect of the hazardous waste definition in the **Permit** Plaintiff believes is problematic. In addition to its failures to meet the federal pleading standard, the Complaint as written provides no basis on which NMED may formulate a thoughtful and informed response," it says. If the court refuses to dismiss the complaint, it should call on the service to specify the alleged flaws in the **permit**, it says.

The **permit** being challenged is simply a renewal and revision of a past **permit** originally issued in 2003 that the Air Force did not challenge, it says. "Plaintiff does not allege that NMED failed to comply with its own administrative procedures in issuing its **permit**, nor does it allege that those procedures failed to fall within the express waiver of sovereign immunity," the state says.

"Rather it appears that Plaintiff simply disagrees with the outcome of those procedures and now seeks to collaterally attack the contents of a **permit** lawfully issued by NMED under its delegated authority."

On sovereign immunity, New Mexico says the Air Force's claim of sovereign immunity appears to entirely depend on its claim that the hazardous waste definition for purposes of corrective action is not consistent with New Mexico's HWA. But, NMED says, the state court of appeals "is expressly empowered to provide judicial review of final NMED permitting actions," so this issue fits "squarely within that court's competence to decide."

It adds, "Moreover, to the extent the federal sovereign immunity claim implicates any issue of federal law outside of the HWA, nothing in New Mexico law bars consideration of such a claim."

Further, on the "unsupported" claim that the **permit's** hazardous waste definition exceeds RCRA's sovereign immunity waiver, the state says the **permit** was issued under New Mexico's RCRA authority -- which was recognized by the Air Force when it entered into the previous **permit** for the base.

"Plaintiff has failed to articulate any reason why it should now be exempted from the RCRA waiver of immunity," it adds. "Therefore, the Complaint fails to state a claim on which relief may be granted." -- Suzanne Yohannan (syohannan@iwpnews.com)

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**EPA TOUTS 10-YEAR TRI CUTS TO BOLSTER ROLLBACKS DESPITE ANNUAL INCREASE**

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Posted March 05, 2019

Top **EPA** officials touted just-released analysis of the Toxic Release Inventory (TRI), which show a decline in releases over 10 years, to renew arguments that such improvements show that the Trump administration's deregulatory efforts can be advanced without increasing risks, though the analysis showed an increase in total annual releases.

"The latest TRI analysis confirms that under President Trump the U.S. continues to improve its air quality while growing its economy," **EPA** Administrator Andrew Wheeler said in a March 5 statement.

**Alexandra Dunn**, **EPA**'s recently confirmed toxics chief, delivered a similar message on a March 5 conference call with reporters. "The most recent TRI news give proof that economic growth and an improved environment can go hand in hand," she said.

The message is not a surprising one for **EPA** under the recently-confirmed Wheeler, who announced in his first address to **EPA** staff as acting administrator last year that one of his top priorities is improving **EPA**'s risk communication.

He and other officials have sought to make the case that regulators need to better communicate the improvements in environmental quality -- and limited risks -- as a way to justify some of the agency's deregulatory efforts. Their efforts, however, have struggled in the face of public skepticism of the Trump administration's deregulatory efforts and top officials' past industry connections.

Wheeler and other officials' comments come as **EPA** March 5 unveiled its analysis of 2017 TRI reporting data which shows reduction in releases when measured over 10 years but an increase compared to the 2016 data.

Among other things, the analysis shows that TRI covered-facilities reported nearly 4,000 new projects that eliminate or reduce chemical waste; releases to air declined by 11 million pounds from 2016, dropping 57 percent from 2007 levels; and 87 percent of the 31 billion pounds of TRI-covered chemical waste "managed by facilities [in 2017 was] stopped from release by preferred waste management of recycling and treatment," Wheeler said.

Wheeler noted that during the last decade TRI releases have declined "while the U.S. economy has grown," and he highlighted as well a 6 percent drop in air releases of lead and a 9 percent drop in air releases of mercury between 2016 and 2017.

"The bottom line: the U.S. continues to make significant environmental progress. Some people think air quality is getting worse. We need your help to get this information to the public," Wheeler told reporters. "This information also demonstrates we can continue to clean the environment and grow the economy at the same time." Annual Increase

But the analysis, and some agency officials, acknowledged an increase in total releases compared to 2016. For example, the analysis states that from 2016 to 2017, "[t]otal releases to the environment increased by 13%, driven by the 21% increase (433 million pounds) in on-site land disposal."

The analysis shows the metal mining sector accounted for 50 percent of total 2017 releases, some 1.95 billion pounds, "which were primarily in the form of on-site land disposal." The chemicals sector was the second highest release sector for 2017, with 13 percent of total releases.

Of the total releases in 2017, eight chemicals comprised 76 percent of total releases, the analysis shows, with lead and zinc the top individual substances released. Lead represented 25 percent of the total, while zinc is 19 percent.

Some **EPA** regions acknowledged the increases. For example, **EPA** Region 5 said in a press release that although overall releases were up in the region by 7 percent for 2017, they are down by almost 40 percent from 2007.

"The increased releases in Region 5 during 2017 are due to increased off-site transfers of waste for disposal and on-site land disposal. The increased releases are primarily due to increases from the hazardous waste sector," the region said.

Wheeler and other officials largely sidestepped the increase. They also argued that context is important when considering TRI data, which is just one source of information about chemicals.

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"It's important to note that just because there is a chemical release, it doesn't mean there is a risk. Information must be presented in context," Wheeler said.

Asked what changes **EPA** is making to try to better provide context around TRI data, Wheeler replied, "The TRI release data is just that. Hopefully for the most part releases are fully permitted and within permitted limits. That's why it doesn't necessarily mean a negative for health effects."

Wheeler added that TRI "is not an exposure tracking system. What's important is, where anybody lives, they can go online and see the facilities in their communities and what they are releasing."

Like Wheeler, Dunn noted during a second March 5 conference call with Region 5 **Regional Administrator** Cathy Stepp that "just because there is a chemical release does not mean there is a human health risk. TRI information must be presented in context. It must be paired with the health effect in question and whether the health effect is likely to present a risk." Fenceline Communities

Asked how **EPA** might discuss this context with fenceline communities, those closest to facilities and exposed to their emissions, such as the town of Willowbrook, IL, where residents are concerned about ethylene oxide releases from a Sterigenics medical sterilization facility, Dunn replied, "TRI is one source of data. . . . The emissions that are reported have to be paired with information about the hazard of the chemical as well as the nature of exposure. When you talk about fenceline communities, that would be a piece of information. They might want to seek information from the facility about those emissions. This data is reported by facilities to **EPA**, they are aware of the information and should be able to answer followup questions from the community."

She did not comment on a recent report that the company dropped its past voluntary practice of reporting its TRI releases, providing no 2017 release information.

A Sterigenics spokeswoman previously told Inside **EPA** the company is not required to file TRI reports for its facilities but did not explain why. She added that "Sterigenics . . . like many other companies, made a business decision to no longer voluntarily file TRI reports." — Maria Hegstad (mhegstad@iwpnews.com)

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## **EPA TOUTS ENFORCEMENT DEFERENCE POLICY BUT ALSO EYES STATE 'ASSISTS'**

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Posted February 28, 2019

A year after issuing interim guidance that mandates "deference" to states in environmental enforcement, top EPA officials are touting the Trump administration's success in shifting enforcement action to the states, though they are weighing changes to the guidance even as Democrats and environmentalists continue to attack the strategy.

In her testimony at a Feb. 26 hearing of the House Energy & Commerce Committee's environment panel, EPA enforcement chief Susan Bodine said her practice of deferring to states' discretion on enforcement actions, set out in a memo to staff in January 2018, has not stopped the agency from putting pressure on states to step up their work when deficiencies arise.

"We have two examples where we've leaned heavily on states to take action and they have. . . . But then, at the end of the day the state finally did take the action, we didn't have to, and all that work doesn't show up on our results," Bodine said in her opening statement to the panel.

Under Bodine's 2018 interim guidance, "EPA will generally defer to authorized States as the primary day-to-day implementer of their authorized/delegated programs, except in specific situations." Those situations include, among others, a need, documented in program audits, for EPA to "fill a gap" in a deficient program; significant noncompliance that a state has not "timely or appropriately" addressed; and any circumstance demands EPA's resources or expertise.

Bodine said during the Feb. 26 hearing that formalizing the deference policy has bolstered relationships between EPA and state enforcement personnel, with benefits to joint inspections and other on-the-ground work as well as expanding federal training for state employees.

But she also suggested the policy may not allow EPA staff to get credit for work they do in assisting state-led enforcement actions.

"If we take a joint inspection in an authorized program of a state, it may be that the state takes the formal enforcement action, and not EPA. We call those 'state assists.' But we're getting compliance. We're also developing new measures to capture those efforts, because I want the staff to get credit for all of the work they're doing," Bodine said.

The note that "state assists" do not appear on EPA's formal statistics was part of her defense of EPA's fiscal year 2018 enforcement figures, which largely declined from prior years — including some that reached historic lows, such as civil penalties for environmental violations.

Bodine did not elaborate on the circumstances that led EPA to "lean" on states' enforcement programs, and EPA did not respond to a request to expand on her comments.

While the "interim" guide has been EPA's most formal policy on that deference for over a year, a long-promised update to the policy appears to be taking shape, according to EPA Region 9 General Counsel Sylvia Quast. Final Version

During a Feb. 28 Environmental Law Institute (ELI) webinar on cooperative federalism, Quast said agency officials are actively working toward a final version of the memo.

"We're in the middle of evaluating that interim guidance and seeing does it need to be modified. . . . We had a call yesterday where regional counsels talked about our experience implementing the interim guidance," Quast said.

But she added that the updated policy, whenever it debuts, is unlikely to work dramatic changes to the Trump EPA's practices so far.

Officials are "thinking about not changing that dramatically; just a reupping of our commitment to working with states. We have to because that is the resource situation we're in and that's the structure of environmental laws in the first place," Quast said.

She also touted the benefits of the memo, saying it acknowledged and formalized a long-running practice between EPA and states.

"To me the notion that this is a new and dramatic and different change doesn't really conform to the reality of how we have been living in the environmental sector . . . The states have been doing the vast majority of environmental regulation and enforcement for many, many years now," Quast said.

"The notion that other states are going to step in, take over, and EPA is going to step back and not do anything is not realistic."

State representatives on the webinar also defended Bodine's memo. Julia Anastasio, executive director and general counsel for the Association of Clean Water Administrators that represents state water regulators, downplayed claims that the 2018 memo represented EPA withdrawing from its enforcement duties.

And Anastasio said the memo merely "institutionalizes" long-standing practices for EPA's work with delegated states. She added that in many cases states prefer to work with EPA rather than alone, as long as that work is cooperative. "Entities need national partners for national minimum standards . . . because cooperative federalism

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is in fact messy," she said. 'Violations Just Sit'

But Democrats and environmentalists are keeping up their attacks on Bodine's deference policy, including at the Feb. 26 hearing where they said EPA is letting active violations "sit" without action from either state or federal regulators.

"There are certain responsibilities that you can't just push off to states, and I think that's letting a lot of these violations just sit," Eric Schaeffer, executive director of **Environmental Integrity Project** and a former top EPA enforcement official under the Clinton and George W. Bush administrations, said in response to a question from the subcommittee's vice chair Joseph Kennedy III (D-MA) on whether states are filling gaps left by the deference policy.

Speaking to Inside EPA after the hearing, Bakeyah Nelson, executive director of Air Alliance Houston, said the Trump EPA, both before and after Bodine's memo, has stood behind decisions by the Texas Council on Environmental Quality not to enforce against facilities that released toxic chemicals during the massive floods caused by Hurricane Harvey in 2017, and to impose what she called inadequate fines on other violators.

"I think that we live in a state where we know that they're not penalizing . . . if the penalty is not strong enough, there's no profit incentive to comply. There's enforcement there but no teeth behind it," she said.

And Schaeffer in a separate interview with Inside EPA named the ongoing controversy over chloroprene releases from the Denka Performance Elastomers plant in LaPlace, LA, as an example of one such violation.

"To bring what states are doing into the conversation, that makes sense. What I'm going to keep doing with them is I'm going to take these big, dirty cases and keep dropping them on them, and say 'what does cooperative federalism mean here? What's the outcome? That's what people care about,'" Schaeffer said. -- David LaRoss (dlaross@iwpnews.com) & Dave Reynolds (dreynolds@iwpnews.com)

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## HIGH COURT DENIES REVIEW OF CHALLENGE TO EPA 'VETO' OF CWA 404 PERMITS

**Inside EPA** | 03/07/2019

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Posted March 04, 2019

The Supreme Court has rejected a petition that sought judicial review of **EPA's** "objections" to proposed Clean Water Act (CWA) dredge-and-fill permits, letting stand an appeals court's decision that requires applicants to instead wait until a formal agency approval or denial before challenging the permitting process.

In March 4 orders, the high court denied review without comment in *Marquette County Road Commission v. EPA*, which sought to overturn the agency's objection to a CWA section 404 permit crafted by Michigan that led to the Army Corps of Engineers taking over the process of crafting a final permit.

The commission argued in briefs that **EPA's** action was effectively a "veto" of the state-crafted permit that forced it to file a new application from scratch with the Corps, but a unanimous panel of the U.S. Court of Appeals for the 6th Circuit disagreed. Instead, they held that the objection was merely part of a continuous permit process

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established by the CWA.

"In the absence of any decision from either agency to ultimately deny or grant the permit . . . we have nothing to review," Chief Circuit Judge Alice M. Batchelder wrote.

Under the CWA, **EPA** can file objections to any state-crafted water permit if it feels that the proposal would not adequately protect the environment or is otherwise legally flawed. If it cannot resolve the objection in negotiations with the state it can then "federalize" the permit, which shifts authority to **EPA** itself for a National Pollution Discharge Elimination System permit or to the Corps for a dredge-and-fill permit crafted under section 404 of the law.

Marquette insisted in its filings that when **EPA** hands authority over a contested to the Corps it represents "final agency action" reviewable under the Administrative Procedure Act. But the government countered that as long as any agency is still working on the process no "final" action has occurred.

Had the high court taken the case it would have opened the door for immediate challenges to objections under section 404. **EPA** rarely uses that authority because only Michigan and New Jersey have delegated dredge-and-fill permit authority at all, while permits in the other 48 states are crafted by the Corps no matter what.

But states and the Trump administration are pushing to broaden the delegation of section 404 permit powers, which in turn would tee up more frequent objections by **EPA** as the volume of state-crafted dredge-and-fill permits rises.

The fate of that push is still uncertain, however -- especially after state officials raised fears that the joint **EPA**-Corps proposal to narrow the universe of wetlands and other waterbodies subject to the CWA will make assumption of the section 404 program irrelevant, since many of the waters subject to dredge-and-fill permit protections would be excluded from the law entirely under the current proposal.

"For some states they look at the proposed definition of waters of the U.S., and it excludes virtually all the waters in their state, which would mean there's really nothing to assume, and there would be no federal program in the state because there are no jurisdictional waters," Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators which represents state and interstate water programs, told *Inside EPA* recently. -- David LaRoss (dlaross@iwpnews.com)

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## SENATE ENERGY PANEL SEEKS TO SPUR 'PRAGMATIC' CLIMATE POLICY DISCUSSIONS

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Posted March 05, 2019

A Senate energy committee hearing on the power sector and climate change -- billed as the chamber's first hearing to explicitly address the issue in five years -- focused largely on low-carbon technology and incentives to reduce carbon emissions, omitting some of the highly partisan fights over climate policy that have gained steam in recent months.

"Clearly the effort here is to get a bipartisan conversation going," said Energy and Natural Resources (ENR) Committee Chairwoman Lisa Murkowski (R-AK). "The rhetoric surrounding the issue of climate and climate change can be so heated and animated, and so oftentimes just a very toxic discussion that you cannot get to focusing on the solutions, on where we're going in a positive way."

The March 5 hearing was the Senate's first to directly address climate change since 2012, though ENR hosted a proceeding in early February on "energy innovation" that included significant discussion of low-carbon technology and acted as a de facto climate hearing.

While senators and witnesses at the recent hearing praised the "robust" and "serious" discussion on the power sector's low-carbon transition, the event nonetheless showcased the limits of the current political environment on climate policy.

For example, only two Republicans besides Murkowski participated in the discussion – with Sen. Cory Gardner (R-CO) praising energy savings performance contracts and tax incentives for carbon capture and advanced nuclear technologies, and Sen. Bill Cassidy (R-LA) largely arguing that states with more ambitious carbon policy face higher electricity prices.

That dynamic underscores that Murkowski is one of the few in the GOP caucus willing to engage publicly on climate mitigation policy, with most Republicans largely opposed to carbon controls or seeking to sidestep the issue.

Additionally, witness Joseph Kelliher of the power generator NextEra Energy, noted at one point that debating the benefits and drawbacks of various types of climate legislation "assumes there's some consensus on carbon policy."

Left unsaid in his testimony is that Congress is far from achieving such a consensus on the need to cut greenhouse gas emissions to address climate change.

Nevertheless, Murkowski and committee ranking member Joe Manchin (D-WV) promoted a "reasonable" and "pragmatic" policy that relies largely on developing low-carbon technologies and providing incentives for their deployment – while eschewing "mandates" to reduce emissions.

Manchin, who has long supported coal and other fossil fuels and opposed Obama **EPA** GHG rules, said that any climate legislation must address the threats fossil-dependent states face from a shift to low-carbon energy.

Such a bill "must offer states like West Virginia opportunities, not additional economic burdens," he said, adding that it should "ensure our citizens have a role in the clean energy future."

He also urged environmentalists to accept the "reality" that "fossil fuels aren't going anywhere anytime soon," particularly in developing countries, and that the United States should thus develop carbon capture and other technologies to control emissions from those sources.

Murkowski focused at length on climate-related damages that are occurring in her home state, including a significant loss of sea ice and permafrost, as well as efforts to deploy low-carbon micro grids to help address reliability and cost issues in the state's rural areas.

"In Alaska, we view there is no choice here" but to begin addressing climate change, she said. Incentives & Mandates

Many witnesses broadly embraced her view that "incentives" to reduce emissions are preferable to "mandates," though that notion faced occasional pushback.

Kenneth Medlock of Rice University's Center for Energy Studies, for instance, said lawmakers should be "open to disincentives" such as "pricing mechanisms" that discourage higher-carbon resources.

"If you're trying to alter the economic landscape, typically one of the best ways to do that is through pricing mechanisms, and tax is actually a viable approach," he said, offering implicit support for a carbon tax.

Additionally, Lisa Jacobson, president of the Business Council for Sustainable Energy, testified that Congress in the future could consider "market-based mechanisms to address carbon emissions" such as cap-and-trade programs.

She later added that "what's key is building bipartisan, durable policies that the market can invest on." If a policy causes significant "economic harm, it's going to be rejected over time."

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Jacobson -- whose group includes natural gas, renewables and energy efficiency firms -- added that the hearing represented a "refreshed, robust, serious conversation" on climate change, and that Congress could start with a broad consensus on research and development for low-carbon technology, "and maybe build out from there." Green New Deal

Another issue that was largely missing from the ENR hearing was discussion of the Green New Deal (GND) climate resolution that has consumed the climate debate in Congress over the past several months -- with Republicans seeking to paint the plan as extreme in often exaggerated terms.

Cassidy mentioned the GND once in passing as part of a broader point on the economic risks of carbon mitigation efforts, and Manchin offered indirect pushback to the plan's call to achieve a carbon-free power system within the next decade, arguing that is not "possible."

But both Murkowski and Manchin pledged a continued focus on climate policy. "I do think this is one of the exciting areas where we can truly make a difference for our nation's economy, for our nation's environment and really for our nation's health," Murkowski said.

Manchin added that the hearing is "is just the beginning. It's not the ending, one and done." -- Lee Logan (llogan@iwpress.com)

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## **WATER SECTOR'S REPORT COULD BOOST EPA BID TO CONSOLIDATE SMALL UTILITIES**

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Posted March 05, 2019

A coalition of wastewater and drinking water utilities in a new report is recommending steps to encourage the consolidation of small utilities, which could boost **EPA's** bid for increased collaboration among utilities and help shape the agency's response to a statutory mandate for crafting rules on when states can mandate consolidation.

The coalition known as the US Water Alliance released its report, *Utility Strengthening through Consolidation: A Briefing Paper*, in late February. It outlines guiding principles for consolidation, starting with the need for proactive, community-driven approaches, in order to be sensitive to local concerns, while emphasizing the ability of consolidation to enable utilities to address unfunded investment gaps and support better operational resilience, among other benefits.

But it acknowledges that states may need to step in and require consolidation if communities and their water systems face challenges that place public health or the environment at significant risk.

The alliance's membership includes a host of individual water utilities, groups representing different aspects of the water sector, private water companies, environmental groups and labor unions.

The report follows a 2018 white paper from the alliance calling for **EPA** policies to promote regionalization and



provide regulatory flexibility to encourage partnerships.

Andrew Sawyers, director of **EPA's** Office of Wastewater Management, said last year that among agency water chief David Ross' priorities was reducing the number of drinking water and wastewater systems through partnerships, collaboration and alliances.

"It's not that simple" to combine utilities, "but it's absolutely necessary" to look at streamlining, Sawyers said, adding that there is a need to examine both structural and operational changes.

There are more than 51,000 community water systems and nearly 15,000 wastewater treatment plants. More than 80 percent of water systems serve fewer than 3,330 people, and 55 percent serve fewer than 500.

And **EPA's** Inspector General has identified a wide array of challenges facing small drinking water systems — that serve 3,300 or fewer customers — in providing safe, reliable and affordable drinking water to their customers, factors that could bolster the case for consolidation.

These challenges include adapting to new regulatory standards, the need to upgrade or replace aging infrastructure, source water availability and protection issues, and increasing budgetary constraints.

Calls for consolidation of drinking water and wastewater utilities date back to at least 2003 when the majority of **EPA's** National Drinking Water Advisory Council supported reducing utility costs and facilitating compliance through consolidation. While the National Rural Water Association objected to some of the recommendations in the 2003 report, the organization is supporting the alliance's report, which grew out of stakeholder discussions last year.

Additionally, last year's America's Water Infrastructure Act directed **EPA** by the end of 2020 to promulgate regulations that would give states greater authority to require utility consolidation.

Specifically, the law says states may require the owner or operator of a public water system to assess options for consolidation or transfer of ownership of the system if the system has repeatedly violated national primary drinking water regulations in ways that are likely to adversely affect human health and is unable or unwilling to come into compliance, and the consolidation or transfer could result in greater compliance. Coalition's Recommendations

The report echoes this language, saying, "Consolidation, technical assistance, funding, and other support — individually or combined — all need to be on the table to ensure communities are provided with reliable access to clean and safe water services. If communities are in this challenged context but encounter resistance or reluctance to solve the challenge, state authority to require consolidation becomes a critical option, and may ensure sustainable local water services, protection of public health, and environmental well-being."

Other guiding principles include presenting consolidation in the context of the value it can provide the community, exploring a range of consolidation models, and having states adopt a complete and cohesive authorizing environment to streamline consolidation transactions and lower up-front transaction costs,

The alliance notes there are a range of actions to achieve greater scale in the water sector, starting with agreements and contracts on one side of the spectrum and full consolidation on the other. In between are options such as partnerships, franchising and regionalization where to various degrees management, governance, operations and financial functions are consolidated without resulting in a single legal entity.

And even with total consolidation, there are three primary approaches, the report says. Direct acquisition is where a higher-capacity utility acquires the assets, operations, and customers of another system and absorbs them into its existing governance, operational and financial frameworks.

A joint merger is where two or more relatively equal partners both adjust governance, operations, and financial frameworks to create an entity that is owned and controlled by the previously separate parties — for example, through consolidating assets and giving governing authority to a merged board of directors.

A balanced merger is where two or more entities consolidate with the goal of establishing a governance structure that provides a basis for at least some direct participation by the pre-existing utility in future decision-making. However, equal representation of all parties may not be an objective or even feasible. This is a common approach when many lower-capacity systems consolidate with one higher capacity system, the report says.

After discussing the financial and managerial benefits of consolidation, as well as the financial and cultural barriers to consolidation, the report makes several recommendations for those trying to accelerate utility consolidation. These include building the evidence base, creating a supportive regulatory and policy

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environment, increasing financial support, and supporting capacity building and knowledge transfer. States' Role

The alliance also says all levels of government have a role to play in creating an enabling policy environment for utility consolidation, with state governments playing an especially important role. "Comprehensive state frameworks should facilitate and encourage communities to customize consolidation agreements. States may require systems to consider consolidation, and others require it in certain cases," the report says.

Specifically, states should develop clear procedures for how to initiate and complete consolidations relative to each major institutional governance model in state statute and regulation; define water utility valuation methods to calculate the fair market value of system assets; remove obstacles such as service area restrictions, right to serve restrictions and rights of first refusal; clarify and limit liability exposure; and establish the ability to order consolidation as a backstop to address significant noncompliance.

All levels of government should provide financial incentives to encourage system to consolidate, including prioritizing state revolving funds (SRF) for consolidation projects and offering priority points when evaluating applications for SRF money; requiring SRF applicants to assess consolidation and whether it would result in cost savings or significant health benefits for customers; and subsidizing consolidation through principle forgiveness, grants, and interest rate reduction. — Lara Beaven (lbeaven@iwpnews.com)

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## ESCALATING CONTROVERSY, MCCOLLUM SEEKS EPA REGION 5 PERMIT COMMENTS

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Posted February 27, 2019

Rep. Betty McCollum (D-MN), chair of the appropriations subcommittee that oversees **EPA's** budget, is urging the agency to release Region 5 staffers' comments criticizing a Minnesota mine permit that political leaders allegedly suppressed, escalating a controversy that has already prompted calls for an Inspector General (IG) review.

"In the interests of transparency and maintaining the public's trust, I am requesting that you make available to the public a copy of any written comments or concerns prepared by **EPA** staff regarding the Northmet mine permits," writes McCollum in a Feb. 25 letter to Acting **EPA** Administrator Andrew Wheeler, referring to the permit that Minnesota drafted under delegated Clean Water Act (CWA) authority and that Region 5 reviewed.

**EPA** has begun to test its new approach for federal reviews of state-crafted permits, and critics of Region 5 — which includes Minnesota — suggest its political officials suppressed staff comments faulting the mine permit.

A former **EPA** lawyer and a local tribe have raised concerns that political officials suppressed Region 5 staff's written comments and urged the IG to investigate. Separately, a union representing many public employees has also filed a Freedom of Information Act (FOIA) lawsuit seeking the alleged staff comments.

McCollum adds to the criticism by saying failure to publicly release the comments **EPA** staff prepared on the Minnesota Pollution Control Agency's (MPCA) CWA National Permit Discharge Elimination System (NPDES) permit for a PolyMet Copper-Nickel mine near Lake Superior runs counter to Wheeler's directive from late 2018

to boost transparency issued in the wake of his predecessor Scott Pruitt's departure.

"[L]ast November you sent a memo to **EPA** staff reaffirming your commitment to agency transparency and reminding staff of their long-standing obligations under the Federal Records Act to create written documentation for 'all substantive decisions reached orally,'" McCollum says.

McCollum's letter hints at others' allegations that Region 5 staff read criticism of a draft water permit for the mine to state officials over the phone rather than providing written comment the public might more easily access.

McCollum's request for documents from the Region 5 review of the MPCA permit build on growing criticism that suggests the mine's permit is becoming a test case for the Trump administration's agency-wide effort to streamline regional reviews of state permitting and other programs implementing federally delegated environmental law.

The alleged failure to provide written comments on a NPDES permit for the mine comes as **EPA** has recently piloted its new framework for reviewing state permits in several regions and on reviews of the Title V air permitting program and on real-time review of state-issued NPDES permits.

In a meeting last March with **EPA** Chief of Operations Henry Darwin, chief author of the plan for streamlining federal reviews of state programs, state regulators requested that **EPA** focus any new process on regions' reviews of states' NPDES permits and targeted Region 5 as an example of why a streamlined policy is needed.

During the March 22 closed-door session of the Environmental Council of the States (ECOS) 2018 Spring Meeting in St. Paul, MN, some state regulators cited Region 5 as a region that conducts in-depth reviews of permitting and other decisions rather than merely assessing whether a state's permit is adequate to meet federal standards.

A former state regulator told Inside **EPA** soon after the meeting that "historically, Region 5 states say Region 5 is way down [in] the details of what they do every day."

Some state officials also noted that Region 5, which spans Minnesota, Wisconsin, Illinois, Indiana, Ohio, and Michigan, has more staff than some other regions, and suggested that scaling back the region's staff could help limit its scrutiny of state actions and ensure consistency with other regions. 'Last Option'

Wheeler memorialized Darwin's plans for streamlined reviews in an Oct. 30 memo to regional officials, "Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes."

The memo generally calls for **EPA** to defer to state decision-making in most cases but also lays out situations when regulators should intervene to protect human health and the environment.

"States and tribes have the primary role in state- and tribal-implemented federal programs, and the **EPA** will generally defer to states and tribes in their day-to-day activities," Wheeler says describing the first of four principles that will guide regions' review of state programs.

"Withdrawal of program implementation authority is a last option to be considered after all other options have been exhausted or when human health and the environment are at risk," the memo adds.

But the status of the **EPA** regions' implementation of the policy for streamlined reviews is unclear.

In a Feb. 6 interview focused on Darwin's wide-ranging effort to bolster efficiency at **EPA**, through changes such as regional reorganization, creating more efficient processes through LEAN business techniques, and streamlining regional reviews of state programs, Darwin said he was not currently up on the status of the agency's piloting of the new framework for faster reviews.

He said that he is in discussions with regional officials who conduct the reviews on continuing to develop a framework for improving **EPA**'s oversight of state programs. He said **EPA** is trying to develop a system for determining the number of permits regional staff would audit, and added that the depth of any audit would likely vary depending on the type of permit being reviewed and a state's history in effectively issuing those permits.

"We have been talking to the offices that do these reviews [about] how could we establish a system -- that is consistent -- but that we decide on a state-by-state basis -- which permits warrant review based on past experiences," he said. 'A Larger Pattern'

In her letter, McCollum reiterates concerns raised by a retired **EPA** water attorney, a Minnesota environmental

group and the Fond du Lac Band of Lake Superior Chippewa that Region 5 staff had "serious reservations" that MPCA's January 2018 NPDES permit was inadequate and so prepared written comments but never forwarded the written comments to state regulators.

McCollum says that such a process would give the public little knowledge of **EPA** staff's concerns and whether the state adequately addressed those concerns prior to issuing the final NPDES permit in December 2018.

In a nod to claims in requests to the IG and the Public Employees for Environmental Responsibility Feb. 19 FOIA lawsuit claiming that Region 5 staff last April read comments to MPCA over the phone, McCollum says, "To the extent that the substance of written comments were ultimately shared with the MPCA verbally, I ask that the written comments be annotated to indicate which concerns were shared verbally."

**EPA**'s IG is currently weighing requests from retired **EPA** attorney Jeffry Fowley and the Fond du Lac Band to investigate the Region 5 review of MPCA's permit for the mine.

While McCollum targets Wheeler's transparency pledges that have earned him bipartisan praise as his nomination to remain at the helm of the agency is pending, the requests for an IG investigation suggest that allegations of an inadequate regional review of the PolyMet mine permit may reflect broader shortcomings in **EPA**'s review of state programs.

The Fond du Lac Band in its Feb. 5 request for an IG investigation raises "serious concerns" that "irregularities" in Region 5's review of the MPCA permit for the mine could hinder future reviews the region conducts.

The Band cites as an example **EPA**'s role in a pending PolyMet application to the U.S. Army Corps of Engineers for a Clean Water Act section 404 and dredge-and-fill permit for the mine.

"[F]ailure to provide (for the record) such comments appears to violate legal and certainly ethical requirements and, sadly, appears to be part of a larger pattern by Region V to suppress staff comments on other MPCA permitting actions as well," the Band says. "If true, this confirms that **EPA** is not carrying out its basic responsibilities, including effective oversight of delegated state regulatory actions."

And while Wheeler's Oct. 30 memo on regions' reviews allows for situations when **EPA** might intercede if state permitting is deemed inadequate, Fowley says in a Feb. 1 supplement to his initial request for an IG investigation that the Trump administration appears unlikely to take that step even when circumstances warrant it.

"I think your office also should investigate the failure of the current administration to support making formal objections and taking over permit issuance when necessary, to prevent state permits being issued which violate minimum federal requirements," Fowley says in the addendum.

"My understanding is that no such formal objections and assumptions of federal responsibility have occurred during this administration in the water program in Region V or any other Region." -- Dave Reynolds (dreynolds@iwpnews.com)

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**DISTRICT JUDGE FINDS EPA LIABILITY UNDER SUPERFUND FOR GOLD KING MINE SPILL**

Posted March 01, 2019

A federal district judge has ruled that **EPA** faces liability under the Superfund law for its accidental massive wastewater spill from the Gold King Mine cleanup in 2015, backing state and private plaintiffs' claims that federal cleanup projects like the mine can be subject to the statute's application to waste "operators," "arrangers," and "transporters."

In a Feb. 28 opinion, Chief Judge William P. Johnson of the U.S. District Court for the District of New Mexico largely rejects **EPA's** motions for dismissal in the consolidated suit over the Gold King spill. The decision means plaintiffs will be able to pursue their claims against the agency not only under the Superfund law, but also the Clean Water Act (CWA), Resource Conservation & Recovery Act (RCRA) and Federal Tort Claims Act (FTCA).

That means the next phase of litigation will focus on establishing exactly what went wrong during the Obama **EPA's** attempted cleanup of the former Gold King gold mine in San Juan County, CO, that triggered the release of 3 million gallons of contaminated wastewater that had built up under pressure inside the closed mineshaft.

**EPA** argued in briefs that the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Superfund law, should never penalize federal authorities for the effects of a cleanup project or other response actions to pre-existing contamination.

But Johnson rejects that claim and says appeals courts have consistently held that the law does not waive sovereign immunity for the effects of cleanup work.

"Three circuit courts have rejected the proposition that [CERCLA] does not waive . . . sovereign immunity 'for response actions when such actions are **EPA's** sole connection to the site,'" Johnson writes, noting that the relevant sections of the law impose mandates on "persons" who release hazardous waste without exceptions for the government.

Quoting from *FMC Corp. v. U.S. Department of Commerce (DOC)*, a 1994 en banc decision from the U.S. Court of Appeals for the 3rd Circuit where the court split 9-3, Johnson writes, "the government can be liable when it engages in regulatory activities extensive enough to make it an operator of a facility or an arranger of the disposal of hazardous wastes even though no private party could engage in the regulatory activities at issue."

In addition to *FMC*, Johnson cites *U.S. v. Shell Oil Co.*, a unanimous 2002 9th Circuit panel decision, and *East Bay Municipal Utility District v. DOC*, decided by a unanimous panel of the District of Columbia Circuit in 1997.

New Mexico courts fall under the 10th Circuit, meaning none of those cases are binding on Johnson, but his opinion adopts their logic as a good fit with both the text of CERCLA and broader Supreme Court decisions on the nature of liability under the law.

Following on those principles, Johnson agrees with plaintiffs in the consolidated cases, including the states of Utah and New Mexico as well as the Navajo Nation and individual plaintiffs, that depending on the facts of the case **EPA's** behavior at Gold King could meet CERCLA's tests for an "arranger," "operator" or "transporter" of hazardous waste.

Plaintiffs in the case say **EPA** officials and on-site contractors ignored their established plans for the cleanup and drilled into the mine prematurely, and are thus subject to statutory penalties for a "negligent" release of hazardous waste. **Liability Tests**

Specifically, Johnson writes that the plaintiffs' CERCLA claims are valid because the alleged facts would, if proven, meet the law's tests for liability in three categories.

On **EPA's** role as a "transporter," he writes, the complaints "state claims for transporter liability because they allege that **EPA** took steps to drain the mine and treat the water at the site."

Addressing the "arranger" claims, Johnson writes, the plaintiffs' filings "state claims for arranger liability because they allege that **EPA** took intentional steps to dispose of a hazardous substance."

And on the "operator" test, he writes that the complaints "state claims for operator liability because they allege that **EPA** managed, directed, or conducted operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental

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regulations."

Johnson also rejects **EPA's** motions to dismiss RCRA, CWA and FTCA claims seeking either monetary damages or new mandates to clean up damage from the spill, but the Feb. 28 opinion does not explicitly back the plaintiffs' legal arguments in those areas. Rather, it says that there are still disputes as to the underlying facts, meaning any dismissal would be premature.

"The Court denies the Federal Defendants' Motion to dismiss the Sovereign Plaintiffs' CWA and RCRA claims for lack of subject-matter jurisdiction because the Federal Defendants have factually challenged Plaintiffs' assertion of subject-matter jurisdiction . . . using facts that are disputed by the Sovereign Plaintiffs," the decision says.

Specifically, it notes that Utah says **EPA's** cleanup plan for the Gold King area -- formally designated the Bonita Peak Mining District on the National Priorities List of high-priority response actions -- "does not provide for any remedial action in the State of Utah." That conflicts with the agency's claim that the precise borders of the district are subject to change "based on investigations regarding the extent of the release and the risks posed by the release," which would make it impossible to say for sure that there will be no cleanup in Utah.

Similarly, Johnson is ordering more fact-finding to investigate whether **EPA's** work at Gold King falls under FTCA's exception for "discretionary functions." All sides in the case have clashed over whether the cleanup plan was mandatory for **EPA**, which would mean damages from its fallout can be recovered through FTCA, or subject to officials' discretion and thus outside the statute's reach.

Also still outstanding are dismissal motions filed by numerous private defendants including mining companies that formerly owned the Gold King site and contractors that worked under **EPA** on the cleanup. -- David LaRoss (dlaross@iwpnews.com)

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## **GORSUCH CLAIM ON DEFERENCE'S DECLINE RAISES STAKES FOR EPA'S DISCRETION**

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Posted March 05, 2019

Supreme Court Justice Neil Gorsuch in a new dissent claims there is "mounting criticism" of the Chevron principle that gives primacy to **EPA** and other agencies' interpretations of unclear laws, raising the stakes for pending cases that could give the court's strengthened conservative majority an opening to narrow or scrap the doctrine.

Gorsuch, well-known as an opponent of deference principles, released a dissenting opinion to the March 4 decision *BNSF Railroad Co. v. Loos* that one observer has already said effectively "dances on Chevron's grave" -- even though support for an outright repeal of the precedent by the nine-member high court still appears slim.

While *BNSF* and other pending cases testing Chevron do not involve **EPA** as a legal party, any ruling by the justices to reduce or undo the doctrine would have major implications for the agency's rulemaking discretion.

In his dissent to the 7-2 *BNSF* ruling, which deals with the meaning of the Railroad Retirement Tax Act (RTA),

Gorsuch points out that even though the case deals with an unclear provision of the law Chevron was absent from the parties' briefs and Justice Ruth Bader Ginsburg's majority opinion that part of a \$126,000 award that a BNSF employee received due to an on-the-job injury was considered taxable "compensation" under the RRTA.

"In the past, the briefs and oral argument in this case likely would have centered on whether we should defer to the IRS's administrative interpretation of the RRTA. . . . But nothing like that happened here. BNSF devoted scarcely any of its briefing to Chevron. At oral argument, BNSF's lawyer didn't even mention the case until the final seconds -- and even then 'hate[d] to cite' it. No doubt, BNSF proceeded this way well aware of the mounting criticism of Chevron deference," Gorsuch writes in his dissent, joined by Justice Clarence Thomas.

Chevron, based on a landmark 1982 high court decision, requires judges to defer to agencies' "reasonable" interpretations of unclear statutory language. The doctrine has been decisive in litigation over a lengthy list of high-profile **EPA** rules, and will be key to the Trump **EPA**'s chances of defending its deregulatory agenda in court, as efforts such as its attempt to pare back the scope of the Clean Water Act and to undo a Clean Air Act climate rule for power plants, because they rely on the agency's interpretation of the water and air laws.

But Chevron has fallen out of favor with many conservatives, both in Congress and on the bench.

Republicans introduced bills in the last Congress to repeal the doctrine, although they failed to reach the 60 votes needed to overcome Senate filibusters.

The Supreme Court has avoided taking up cases over whether to overturn or limit Chevron through a new ruling, although it is considering whether to scrap the related doctrine of Auer deference, which applies to agencies' readings of their own rules as opposed to statutes.

The Auer challenge, known as, *Kisor v. Wilkie*, has already emerged as a test case for the justices' position on deference generally and its stature is only likely to grow as it approaches oral argument on March 27. Sen. Sheldon Whitehouse (D-RI) on March 4 filed an amicus brief where he casts that case as part of "a sustained effort" to weaken **EPA** and other agencies that has been brought by industry, conservative groups and other "influencers."

"This case comes before the Court as part of a larger strategy to disable public interest regulation, as a 'stalking horse for much larger game.' It must be seen in the larger context of the age-old contest between powerful influencers who seek to bend government to their will, and a general public that counts on government to protect it from the influencers," Whitehouse's brief says. 'Defanged' Doctrine

But Gorsuch's BNSF dissent gives weight to the growing impression that regardless of whether Chevron and Auer are repealed, deference has become less important to the high court.

For instance, it echoes recent comments to Inside **EPA** by Robert Percival, director of the University of Maryland Carey School of Law's Environmental Law Program, where he said attorneys "are pulling back from making Chevron arguments" because they know the court's right wing is unlikely to support that line of thinking.

And in a March 4 post at SCOTUSblog titled "The Doctrine That Dare Not Speak Its Name," Daniel Hemel, an assistant professor at the University of Chicago Law School, says Ginsburg's deliberate avoidance of Chevron reinforces Gorsuch's point.

"Indeed, her opinion studiously avoids any reference to Chevron whatsoever. The dissent, by contrast, dances on Chevron's grave," Hemel writes. "It seems clear enough that Ginsburg, in order to cobble together a majority, had to steer clear of Chevron in her analysis. And if an opinion relying on Chevron can't muster a majority, then the doctrine has been defanged, even if not overruled."

But the Natural Resources Defense Council's John Walke is pushing back on that narrative, writing on Twitter that even if the high court is downplaying Chevron in its own decisions, the doctrine is still in force for lower courts -- including the U.S. Court of Appeals for the District of Columbia Circuit, which decides most **EPA** regulatory challenges.

"Considering only 2 of 9 justices have called for overruling Chevron, & the vast, vast majority of [federal] agency cases are decided by appellate courts -- especially the D.C. Circuit -- which rely on Chevron regularly, as do litigants, this take is questionable," he wrote in response to Hemel's article.

He also quoted from the late Justice Antonin Scalia's majority opinion in the 2013 case *City of Arlington, TX, v. FCC*, where the court held that Chevron deference applies to agencies' interpretations of the limits of their authority, as "an apt rejoinder" to Gorsuch.

There, Scalia wrote that limiting deference to agencies on the question of where they have authority to regulate "would simply punt that question back to the Court of Appeals, presumably for application of some sort of totality-of-the-circumstances test-which is really, of course, not a test at all but an invitation to make an ad hoc judgment regarding congressional intent. Thirteen Courts of Appeals applying a totality-of-the-circumstances test would render the binding effect of agency rules unpredictable and destroy the whole stabilizing purpose of Chevron." -- David LaRoss (dlaross@ipwnews.com)

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## DEMOCRATS SEEK INQUIRIES AFTER GAO FINDS EPA DROPPED IRIS ASSESSMENTS

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Posted March 04, 2019

Democratic lawmakers are questioning **EPA's** decision to shrink its influential risk assessment program and seeking an ethics investigation into the top Trump research appointee's role, after Congress' watchdog raised questions about **EPA's** priority-setting process, which provided no explanation for a series of dropped assessments, including that of formaldehyde.

Sen. Tom Carper (D-DE) and other Democratic members of the environment committee, along with House science committee Chair Eddie Bernice Johnson (D-TX), sent March 4 letters to Administrator Andrew Wheeler and **EPA's** Scientific Integrity Officer Francesca Grifo, asking them to "investigate whether the Agency's efforts to prevent the completion of the formaldehyde health assessment constituted a violation of the agency's scientific integrity policy, and determine whether [David Dunlap, the top political appointee in **EPA's** Office of Research and Development (ORD)], violated the terms of his recusal agreement by participating in efforts related to the IRIS formaldehyde health assessment."

The lawmakers' letters accompany the release of a March 4 report from the Government Accountability Office (GAO), which reviewed both **EPA's** Integrated Risk Information System (IRIS) and the efforts of **EPA's** toxics office to stand up a new program on industrial chemical risk assessment and management as directed by Congress' 2016 reform of the Toxic Substances Control Act (TSCA).

The report does not contain any new recommendations but found that the Trump **EPA** eliminated as many as nine of 22 pending assessments from the IRIS research agenda, including its high-profile assessment of formaldehyde, which has been pending for more than 15 years.

GAO found that **EPA** initially narrowed the IRIS agenda by limiting its work to assessments that had been requested by program offices. Wheeler alluded to this review in remarks last August, when he said that he was reviewing IRIS assessments to determine importance to program offices.

But GAO found that after the IRIS program had surveyed program offices, ORD required a second round of prioritization that limited program offices' requests to "no more than three or four chemicals."

"ORD's second request was made verbally at a meeting and included direction to the program offices to limit their requests to no more than three to four chemicals," GAO said.



GAO added that "since neither the program and regional offices nor the IRIS Program had information from the Administrator's office about what the prioritization was meant to achieve, the IRIS Program was unable to provide guidance about what chemicals might be considered a priority, or how many they might be able to continue work on."

The end result, released publicly last December, contained an agenda of 11 chemicals, plus two that had already been issued in draft form for peer review. While several high-profile assessments remain on the list -- including re-assessments of arsenic and hexavalent chromium -- formaldehyde is noticeably absent. The public document provides no explanation for why chemicals were dropped from IRIS' agenda. Formaldehyde Assessment

Wheeler told senators in written responses to questions before his confirmation that the formaldehyde assessment was no longer a priority for IRIS. And the chemical industry has been preparing for the possibility that **EPA** may shift the assessment to its TSCA program.

But the lawmakers charge that Wheeler's previous responses "failed to fully describe the reason why formaldehyde was not identified as a top priority for the program offices," they write.

They add that they obtained documents dating from May to December 2018 indicating that ORD leadership expected to release a draft of the formaldehyde assessment for public comment in the fourth quarter of FY2019, and that it would be ready for other federal agencies' review in the fourth quarter of 2018.

An August 2018 memo requesting IRIS priorities from program offices from Jennifer Orme-Zavaleta, principal deputy assistant administrator in ORD, indicated that "in the past," **EPA's** offices of toxics, air, water and children's health as well as Regions 2 and 5 "all had expressed an interest in the completion of the formaldehyde health assessment."

The lawmakers said that in response, memos from the children's health, Superfund, and water offices, as well as Region 4 indicated "that they had a need for the formaldehyde health assessment" while the toxics office "noted different priorities," and the air office "did not indicate a need for any IRIS assessments to be completed at all."

The lawmakers added that after the second, verbal request for program offices to prioritize fewer chemical assessments for IRIS to perform, documents indicated "formaldehyde was not included on any office's priority list."

Further, they cite "GAO's records of interviews with **EPA** staff," in which "they said that the Administrator has his own political agenda, and that will determine their priorities. The Administrator said that he needed to make a decision on formaldehyde one way or another -- it couldn't just stay in limbo forever." Furthermore, "IRIS officials said that the "priority" survey in late October was actually a request made in person at a senior political meeting, and came from David Dunlap."

Dunlap, formerly of Koch Industries, was appointed to serve as the deputy head of ORD last fall. In December, he recused himself from "participating in any particular matter involving specific parties in which my former employer, Koch Industries, is a party or represents a party."

He also voluntarily recused himself from "participation in any matters related to the formaldehyde IRIS assessment" to avoid the appearance of an ethical conflict. Dunlap's Dec. 19 recusal statement is dated the same day that **EPA** released the new IRIS agenda.

But the lawmakers ask **EPA's** designated agency ethics official to "determine whether Mr. Dunlap has violated his recusal agreement," which they say stemmed from his former employer's criticism of **EPA's** formaldehyde efforts.

Their requests underscore long-running concerns that **EPA** efforts to stand up its TSCA program could result in pending assessments being moved to the toxics program while shuttering -- or sidelining IRIS.

A top priority could be the formaldehyde IRIS assessment. The last public draft, released in 2010, created a firestorm of criticism from industry because it linked formaldehyde exposure to development of certain types of leukemia, and upgraded formaldehyde's status to human carcinogen.

Senate Democrats in earlier letters calling for the release of the latest draft have stated that they are told the latest draft reaches the same conclusions about formaldehyde exposure and leukemia that the 2010 draft did.

While GAO does not say whether the formaldehyde assessment has been moved to the toxics office, it notes while IRIS was unable to release any documents because it was awaiting results of the Wheeler-ordered review, "several IRIS staff have been working increasingly for [the Office of Pollution Prevention and Toxics (OPPT)] to

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support its work preparing risk evaluations under TSCA."

ORD told GAO that last September -- three months after IRIS assessments were stopped from being released because of ongoing **EPA** leadership deliberations -- five of approximately 30 IRIS staff were supporting OPPT with 25 to 50 percent of their time. That increased last October, when 28 of approximately 30 IRIS staff were supporting OPPT with 25 to 50 percent of their time."

"According to IRIS officials, this was occurring primarily because OPPT has a significant amount of work to do to meet its statutory deadlines, and OPPT needed IRIS staff expertise to help meet those deadlines."

GAO added that "TSCA establishes a regulatory standard that generally differs from those under other environmental laws, so the TSCA assessments will not necessarily be relevant to other **EPA** programs that have relied on IRIS endpoint values in making their regulatory decisions." -- Maria Hegstad (mhegstad@iwpress.com)

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## **EPA URGES IRS TO ALIGN TAX LAW INCENTIVES WITH BROWNFIELDS DEFINITION**

**Inside EPA** | 03/07/2019

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Posted February 28, 2019

**EPA's** Office of Brownfields and Land Revitalization (OBLR) is urging the Internal Revenue Service (IRS) to align definitions in a proposed rule to implement investment incentives in the 2017 Tax Cuts and Jobs Act with those in the brownfields program in order to spur redevelopment of former industrial sites.

The requested clarifications will give investors confidence that qualified opportunity fund (QOF) investments can be used to assess, remediate and redevelop brownfields located in qualified opportunity zones (QOZs), OBLR Deputy Director Patricia Overmeyer writes in recent comments.

"Subsequently, these clarifications may lead to the economic revitalization of many of our nation's disadvantaged communities."

The 2017 tax law created several federal incentives for private investment in disadvantaged areas known as QOZs, which are defined by census tract data. These incentives include a temporary deferral of capital gains taxes for profits reinvested in a QOF, a reduction in the amount of taxes owed on the original reinvestment and a permanent exclusion of capital gains taxes for profits earned from the opportunity fund, if certain conditions are met.

The IRS last year proposed implementing regulations for the tax law changes, taking comment on the proposal and related guidance documents through the end of last year and holding a public forum on the issue earlier this month.

Among the issues IRS sought comment on were the definition of a property's "original use" and whether "substantial improvement" had been made, two key terms used to determine whether projects are eligible for incentives but not defined in the tax law.

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**EPA** in its comments says QOZs have "the potential to spur investment in communities where neighborhoods have long been plagued by concentrated distress and those left behind by the economic recovery following the Recession," including many communities that struggle with stagnation and lack of access to capital due in part to the challenges of remediating and redeveloping their brownfield sites.

"**EPA's** OBLR encourages the IRS to clarify in the final guidance that investments in the assessment, remediation, and redevelopment of brownfields properties located in [QOZs] are included within the scope of [QOFs]," the comments say. "This clarification will provide an incentive to invest funds in the assessment, remediation, and reuse of brownfield properties."

Specifically, OBLR requests the IRS to clarify the definition of "original use" so that the term applies to property that is a brownfields site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation and Liability Act, which is the law that establishes **EPA's** brownfields program and guides brownfields considerations by many other federal agencies.

"Defining 'Original Use' to incorporate brownfields properties located in QOZs creates the best solution to enabling QOF investments in brownfields remediation and redevelopment," **EPA** says. "This clarification will address the concern that the 30-month window for substantial improvement is unrealistic for brownfields properties, which take longer than traditional vertical development projects due to the added challenges of contamination." "Vacant Or Underutilized"

Additionally OBLR says cleanup or reuse of property that is vacant or underutilized for a period of one year or more should constitute an original use and that foreclosed and tax-reverted properties held by local units of government should be treated as "underutilized or abandoned property."

**EPA** requests that the IRS clarify that any property that has been foreclosed upon and reverted to a local unit of government or land bank should qualify as "vacant and underutilized" regardless of how long it has been vacant, abandoned or underutilized.

"Local units of government often acquire brownfields and other blighted properties through tax delinquency, abandonment, bankruptcy, etc. A bright line test around status of ownership for properties in foreclosure, receivership, or involuntary transfer may be easier to determine than the historical use of the property and expedite investment in assembled properties, particularly in distressed urban areas," the comment say.

Other clarifications **EPA** requests are for improvements to land, including brownfields assessment, cleanup and other site preparation costs, are included as expenses that will meet the "substantial improvement" test for a QOZ property; that gains from QOF investment in brownfield improvements to land should be permitted to be carried over into other QOZ investments; and that QOF investments be allowed to be stacked for brownfield properties that require remediation.

OBLR says that without the clarification about improvements to land, it is unclear how improvements to the land itself factor into a calculation of substantial improvement, given that the adjusted basis example in an IRS revenue ruling last year pertains only to improvements to a building. — Lara Beaven (lbeaven@iwpnews.com)

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**FORMER CASAC CHAIR ALLEGES 'PROCEDURAL IRREGULARITIES' IN NAAQS REVIEWS**

Posted February 28, 2019

A former chairman of **EPA's** Clean Air Scientific Advisory Committee (CASAC) is alleging "procedural irregularities" in the conduct of current panel chairman Tony Cox, charging it further undermines the credibility of the **EPA's** truncated process for reviewing national ambient air quality standards (NAAQS).

In written comments submitted to **EPA** Feb. 27, Chris Frey, CASAC's former chairman and a member of previous specialized subpanels, says Cox's conduct acting outside of formal public settings further compromises the integrity of NAAQS reviews.

Frey says that Cox asked **EPA** staff and a third-party organization, the Health Effects Institute (HEI), written questions outside of the formal CASAC process that is subject to federal regulations under the Federal Advisory Committee Act (FACA).

This flouts the ability of the public to follow proceedings, contrary to FACA, Frey says.

In a statement, an **EPA** spokeswoman rejected Frey's claims that the agency's interactions are at odds with FACA. "The open meeting and advance public notification requirements of FACA only pertain to committee meetings. The follow-up questions from a CASAC member and the responses from the **EPA** and the public are not considered committee meetings and therefore do not need to occur in a public setting nor do they require any public notification.

"The follow-up questions from a CASAC member and the responses from the **EPA** and the public are considered committee records and must be available for public inspection. We meet the public inspection requirements of FACA by posting these records on the publicly accessible meeting webpage," she added.

Frey and other former panelists have leveled withering criticism of the current seven-member CASAC, charging that without the help of specialized subpanels that **EPA** has scrapped, the chartered panel lacks the expertise and capacity to properly oversee NAAQS reviews.

Their criticism is directed at policies put in place by former Administrator Scott Pruitt, who in a May 9 memo set out a policy to shorten NAAQS reviews, by producing fewer documents in the process.

Agency air chief Bill Wehrum has continued this policy and has encouraged CASAC to produce fewer drafts of documents, and less **EPA** consultation with the panel.

Wehrum's goal is to complete review of the ozone NAAQS by the statutory deadline of October 2020, and the particulate matter (PM) NAAQS by December 2020, including "fine" particulate, or PM2.5. At a Dec. 12 and 13 public meeting of CASAC in Arlington, VA, the panel discussed the PM2.5 review, but some panelists requested further drafts of the integrated science assessment under discussion.

But Frey and other former panelists have already warned **EPA** and CASAC that the agency's minimalist approach to review of NAAQS-related scientific documents risks making the eventual NAAQS rules themselves legally indefensible.

For example, he called the truncated review process a "joke" and warned the shortened approach undermines the panel's ability to credibly assess the PM NAAQS as mandated by law. Accountability Studies

Now Frey is criticizing Cox's efforts, citing a Dec. 14 email to HEI on Cox's behalf in which an **EPA** staff member asked HEI about the benefits of accountability studies, which evaluate the effectiveness of pollution control programs.

"To your knowledge, have accountability studies been completed from which it is possible to obtain quantitative estimates of the increases in life expectancy or decreases in all-cause or cause-specific mortality or morbidity rates caused by the independent direct effects of reductions in ambient PM levels?" the agency asked.

HEI, which is funded jointly by **EPA** and industry, is funding research in this emerging field.

But Cox, a longtime industry consultant, is a noted skeptic of some "causal" linkages between air pollution and certain adverse health effects.

In its Feb. 21 response, HEI said that none of the studies it is funding "has been designed specifically to provide the quantitative estimates mentioned in the question, [although] many of them do take advantage of the clear temporal variation in exposure before and after an intervention to determine . . . that the interventions resulted in clear and quantifiable changes in air pollution and different measures of health outcomes."

But it caveated that statement by pointing to certain design elements in studies that could produce misleading results, observing that where multiple pollution reduction programs are in place, is hard to pinpoint which one is producing the most benefit.

It said it "stands ready to provide whatever additional information you might find useful, or to answer any further questions that CASAC might have."

But Frey says the communication between **EPA** and HEI is not consistent with CASAC operating procedures or with FACA. And its apparent request for public comment from some but not all members of the public is unusual. "A request for public comment is properly conveyed via a Federal Register notice of a public meeting of the CASAC," he says. 'Unilateral' Actions

And he says Cox's "unilateral" actions give the false impression that Cox is speaking for the entire CASAC, when in fact he is speaking only for himself. "No one, not even the chair, can speak for CASAC. CASAC speaks for itself via letters to the Administrator that have been approved by the chartered CASAC," Frey writes.

"The formal process for how CASAC can and should interact with **EPA** is not amenable to an ongoing dialectic approach of individual members peppering the agency staff with questions in a post hoc and ad hoc manner. The public has a right to expect that interactions between CASAC and **EPA** will take place at publicly noticed meetings in the full view of the public," Frey writes.

Further, "such post hoc and ad hoc communications that circumvent the public meeting should not occur because they do not represent a clear operating procedure and potentially may be contrary to statute and guidance."

Also, Frey takes issue with a memo written by Cox posing questions for the panel to consider at the December meeting. "It is highly unusual and inappropriate for the chair of CASAC to, in effect, create their own set of charge questions, as was the case" in the undated memo.

The memo file name includes an apparent date, "10302018," suggesting it "may have been issued on October 30," yet was not revealed to the public until Dec. 12.

Frey says, "CASAC does not exist to answer questions posed by the chair." Therefore, "Members of CASAC should be informed that they have no obligation whatsoever to answer the ad hoc questions that were posed by the chair."

The current CASAC lacks experience, Frey says. "The apparent lack of understanding of, attention to, and respect for proper operating procedures seems to be a culture of the current CASAC." He references Cox's suggestion to create a "tiger team" to look into certain issues, or other "creative" ways of doing things. Such remarks could create the impression "that communications may have taken place outside of the proper public deliberative process."

In general, "the procedural irregularities" identified "significantly undermine confidence that the chartered CASAC is compliant with applicable operating procedures and laws and further undermines the credibility of the review process," Frey concludes. He urges **EPA** to "publicly issue clarifications for the benefit of the public, and the members of CASAC, on how CASAC should conduct its work" at the next CASAC public meeting.

But it is unclear when such a meeting might take place. CASAC's public calendar shows no scheduled meetings for 2019, though **EPA** in a Feb. 28 Federal Register notice sought applications to recruit an expert in ecology to the panel.

The **EPA** spokeswoman says that an unnamed member of the current panel "is retiring from federal service and has requested to resign from the CASAC." However, CASAC member Timothy Lewis is listed on the CASAC website as a "supervisory research ecologist with the U.S. Army Corps of Engineers." — Stuart Parker (sparker@iwpnews.com)

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## JUDGE REJECTS NOVEL CLAIM THAT AIR ACT FAILS TO GRANT INJUNCTIVE RELIEF POWER

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Posted March 04, 2019

A federal judge has rejected a novel claim by Missouri-based utility Ameren that he lacks Clean Air Act authority to order injunctive relief to remedy past harms, dismissing what sources describe as a long-shot argument that runs counter to what **EPA** — and federal courts — have successfully been doing for decades.

Judge Rodney Sippel of the U.S. District Court for the Eastern District of Missouri Feb. 27 rejected summary judgment motions in the long-running NSR enforcement case, *United States and Sierra Club v. Ameren Missouri*.

"Neither the plain language of the Clean Air Act nor the case law cited by Ameren supports its claim that no injunctive relief is available to remedy Ameren's past violations of the Clean Air Act. As a result, I will deny Ameren's motion for summary judgment," he wrote.

He also rejected **EPA's** argument in the pre-trial phase that flue gas desulfurization (FGD) constitutes best available control technology (BACT), though he will hear arguments on the issue during an upcoming trial.

One source following the case describes Ameren's claims as "swinging for the fences." The company "essentially argued that the court was powerless to issue an injunction for Clean Air Act violations, despite plain statutory language and case law interpretations to the contrary. Ameren's argument was a long-shot and legally unfounded, and we are not surprised that the court recognized its ample authority to bring Ameren into compliance with the law."

And one environmentalist attorney calls the Ameren argument "so dumb that it would've been shocking for a court to accept it. Mind you, **EPA** has been requiring injunctive relief for past NSR violations for over three decades."

Ameren did not respond to a request for comment but the source following the case says the company has long said it will appeal Sippel's underlying liability ruling — and likely the upcoming remedy ruling — to the U.S. Court of Appeals for the 8th Circuit. As a result, the case is "far from over," the source adds.

While the argument may be novel, Ameren's claim that courts lack authority to impose injunctive relief to address past harms is the subject of one other similar case, where Texas-based utility Luminant Generation is seeking en banc review of an adverse ruling on the topic by the 5th Circuit.

In *United States v. Luminant Generation*, the 5th Circuit in a split decision issued last October overturned a district court ruling backing Luminant's injunctive relief claim. The appeals court held that **EPA** can seek injunctive relief even when the five-year general statute of limitations has passed.

**EPA** and the Sierra Club are opposing the company's bid for en banc review in Feb. 12 filings where they defend the agency's right to ask courts for injunctive relief to force facilities to install pollution controls for years-old NSR violations.

Sippel referenced the Luminant case in his order, noting, "the one district court case that adopts Ameren's interpretation of the statute has been reversed by the Fifth Circuit. . . . As a result, Ameren's argument concerning injunctive relief is unfounded." Remedy Phase

The latest phase in the long-running Ameren suit dates back to January 2017, three days after President Donald Trump's inauguration, when Sippel ruled that Ameren unlawfully evaded prevention of significant deterioration (PSD) permit requirements -- which is the NSR equivalent for areas that are in attainment with national air quality standards -- when it upgraded boilers at Rush Island.

In the decision, Sippel largely backed **EPA's** positions on two key questions: what constitutes "routine maintenance" and is thus considered exempt from triggering an NSR/PSD permit review, and how the "demand growth" exclusion applies to higher emissions from power plants resulting purely from increased electricity demand.

In the remedy phase, Ameren argued Sippel lacks authority to order injunctive relief for past violations of the air law, claiming the remedy was only available to address ongoing violations.

It also argued that he cannot determine what constitutes BACT and that he cannot order emissions reductions at a non-offending plant.

Ameren argued there are technologies less expensive than FGD that could be considered BACT. It also argued the court cannot determine what constitutes BACT because "that would take away permitting authority from the Missouri Department of Natural Resources (MDNR) and violate the federalism inherent to the Clean Air Act."

In denying the company's motion for summary judgment, Sippel rejected all three of those claims. Ameren's arguments "presume a far more reaching determination than plaintiffs have requested. The plaintiffs have not asked me to write and issue a permit. Such a request would violate the principles invoked by Ameren, superseding the administrative process . . . Instead, the plaintiffs seek an order requiring any permit issued for Rush Island to install [FGD] as BACT."

Sippel also notes that few district courts have considered whether a court may enjoin a defendant to install a particular technology as BACT.

While Sippel rejected the company's requests, he said its lawyers "may present these disputes of fact at trial to argue that the balance of hardships and public interests favor a remedy other than the one sought by **EPA**. For that reason, I cannot grant **EPA's** motion for summary judgment."

The source following the case notes that Sippel is effectively saying he cannot determine whether FGD constitutes BACT "just on the papers. He wants to hear" more details at an upcoming April trial before making a decision.

Finally, Sippel rejected Ameren's claim that he cannot order injunctive relief to reduce pollution at a nearby coal-fired power plant, the Labadie Energy Center, because it is a "non-offending plant." He writes that **EPA** and the Sierra Club seek two kinds of relief: an order requiring Ameren to get a PSD permit and install BACT at Rush Island and an order requiring emissions reductions at Labadie to offset the excess emissions from Rush Island that would reduce "future pollution affecting the same region, in an amount commensurate with Rush Island's excess emissions."

Ameren seeks to characterize the second request as an "end run" around NSR violations but "Ameren's characterization misconstrues the kind of relief that the **EPA** is requesting," which is for Labadie to offset the sulfur dioxide illegally emitted from Rush Island, Sippel wrote.

"As a result, Ameren's argument that this relief would undermine the structure of the Clean Air Act and **EPA's** enforcement program is unpersuasive," he found.

The case will now head to a non-jury trial April 8, where Sippel will ultimately determine what steps Ameren will have to take to remedy its unlawful activity.

The source following the case says the trial provides an opportunity for plaintiffs to provide the court "with some options to remedy the harm from Ameren's illegal conduct." — Dawn Reeves (dreeves@iwpnews.com)

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## SENATE GOP CONFIRMS WHEELER AS EPA CHIEF, AMID DEMOCRATS' ATTACKS

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Posted February 28, 2019

Senate Republicans have voted to confirm Andrew Wheeler to be the Trump **EPA's** second permanent administrator, after the chamber's Democrats uniformly rejected the nomination while slamming the agency's rollbacks of climate and other regulations.

The chamber voted 52-47 on Feb. 28 to confirm Wheeler, who had been serving as acting chief since July after former Administrator Scott Pruitt resigned amid a swirl of ethics scandals.

Two relatively moderate lawmakers who had earlier voted to confirm Wheeler as deputy administrator in April 2018 -- Sens. Susan Collins (R-ME) and Joe Manchin (D-WV) -- voted against his current nomination, ensuring Wheeler was approved with only GOP support and that he received bipartisan opposition.

Collins cited **EPA's** rollback of climate rules, while Manchin charged that the agency is not being aggressive enough on addressing drinking water threats from per- and polyfluoroalkyl substances (PFAS).

In a Feb. 27 procedural vote to end debate on the nomination, Manchin voted no, while Collins voted yes.

Wheeler, however, sidestepped any real threats to confirmation when a group of five oil-state Republicans did not follow through on their implied threat to vote against his nomination if **EPA** failed to provide them additional details on a plan to overhaul the compliance credit market for the renewable fuel standard.

Wheeler has generally avoided the ethics charges that plagued his predecessor, though he has mostly continued the Trump administration's broad deregulatory agenda targeting multiple climate change, water, air and other rules issued during the Obama administration.

Ahead of the vote during floor debate, Democratic senators assailed those rollbacks, charging that Wheeler is advancing even some deregulatory measures opposed by industry and highlighting his past work as a coal lobbyist.

"He made a living working for coal. Now, we're supposed to believe he's the best person to keep coal companies in line," said Sen. Brian Schatz (D-HI). "If this were a movie about corruption in politics, this script would be thrown out because it's too obvious."

Democrats also used the debate over Wheeler's nomination to underscore their calls to address climate change, calling it the most pressing environmental issue facing the country.

Wheeler's nomination "goes right to the heart of whether or not we are going to respond to the magnitude of this challenge," said Sen. Ed Markey (D-MA). "I don't know how anyone can vote for Andrew Wheeler given the science that's in front of us. This is just doubling down on a disaster." — Lee Logan (llogan@iwpnews.com)

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## **BIPARTISAN HOUSE BILL WOULD BOOST EPA WATER INFRASTRUCTURE FUNDING LEVELS**

*Inside EPA* | 03/07/2019

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Posted March 05, 2019

A bipartisan group of House lawmakers has introduced legislation to boost authorized levels of **EPA's** clean water state revolving fund (SRF) to \$4 billion annually, more than double its current appropriations, as well as authorize billions of dollars to address sewer overflows, fund states' Clean Water Act (CWA) implementation and augment existing sources of water.

Reps. Peter DeFazio (D-OR), Grace Napolitano (D-CA), Don Young (R-AK) and John Katko (R-NY) introduced the bill March 5.

DeFazio chairs the House Transportation and Infrastructure (T&I) Committee while Napolitano leads the committee's water resources and environment panel. Young, a former chairman of the committee, and Katko also serve on T&I.

The bill -- which would reauthorize the fund for the first time since 1994 -- also enjoys broad support among industry, water, labor and environmental groups, suggesting it could advance given calls from lawmakers and the Trump administration for increased infrastructure funding.

"It's clear communities across the country need a partner to carry out critically important protections, which is why our bill authorizes approximately \$23.5 billion to improve our wastewater infrastructure, make it more resilient to disasters, and affordable for all communities. What's more, investing in our water infrastructure will create good paying jobs and provide communities with infrastructure that will last for decades," DeFazio said in a March 5 statement.

Napolitano, who played a key role in advancing two water infrastructure bills last year, said the measure "will help to address the current crisis we are facing in the West due to ongoing drought and increased stormwater control issues" by making "tremendous investments in water recycling and reuse, groundwater recharge, and stormwater projects."

The bill's annual authorization of \$4 billion for the clean water SRF is a significant boost over previously authorized levels and recent appropriations of roughly \$1.3 billion.

Additionally, the bill authorizes \$900 million for grants to municipalities to capture, treat or reuse combined and sanitary sewer overflows or stormwater; \$1.5 billion over five years for state water pollution control agencies to implement their delegated CWA water pollution control programs; \$600 million over five years for pilot programs aimed at addressing wet weather discharges, promoting stormwater best management practices, undertaking integrated water resource management and increasing the resiliency of treatment works to natural or man-made disasters; and \$375 million in grants over five years for alternative water source projects, including projects that reuse wastewater or stormwater to augment the existing sources of water. Stakeholder Support

The bill has support from 80 municipal, industry and environmental groups, although some of the supporters say they would like to see additional changes.

A coalition of environmental groups, including Sierra Club and Natural Resources Defense Council, notes the proposed authorization for the SRF of "\$4 billion annually would more than double current funding levels and help to make a dent in our nation's substantial infrastructure backlog. In the process, it would also create

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thousands of jobs for America's workers."

But the environmental groups say they hope the legislation can go even further by increasing the authorization to \$6 billion annually. "These additional funds would provide assistance to even more communities and return federal wastewater and stormwater funding levels to the amount appropriated under President Reagan (adjusted for inflation)," the groups say in a March 4 letter to T&I.

The groups also call for directing investment to the communities most in need; adopting measures designed to ensure infrastructure investments are affordable; directing at least 20 percent of funding to green infrastructure projects; and addressing the lack of adequate onsite wastewater options for many rural communities.

The Council of Infrastructure Financing Authorities (CIFA), which represents state agencies that administer the clean water and drinking water SRFs, says in a Feb. 22 letter that it supports the bill because "increased funding can help accelerate investment in water infrastructure."

But it says it is "concerned that the growth in federal requirements during the last decade has depressed demand for Clean Water SRF loans," saying its members have said the cumulative impact of compliance with all federal requirements is the number one reason for postponing investment in critical water infrastructure.

The concern over federal requirements, including procurement of domestic iron and steel and Davis-Bacon prevailing wage mandates, echoes information in an American Water Works Association report last year.

"We hope to work with you to streamline and reduce the burden of federal requirements on Clean Water SRF borrowers to maximize the program's effectiveness and help more communities proceed with construction of these much needed water infrastructure projects," CIFA says.

However, National Association of Clean Water Agencies, which represents public water utilities, and public works groups in a March 4 letter unequivocally support the bill, saying "the legislation will catalyze greater investment in critical infrastructure and help communities around the country address local water quality issues."

Groups representing mayors, cities and counties in a March 1 letter say that they encourage the committee to also consider providing additional tools that offer communities flexibility.

"Local governments need to be able to partner with their state and the federal government to meet their wastewater and stormwater infrastructure needs in a manner that is also affordable to their citizens," the U.S. Conference of Mayors, National League of Cities and National Association of Counties writes.

"We thank the committee for its efforts in passing the bipartisan integrated planning legislation last year and would like to continue our work with you to provide additional flexibility and tools to communities who are facing substantial wastewater and stormwater burdens."

A coalition of groups representing construction, engineering, labor, conservation, public works and manufacturing advocates, known as the Water Infrastructure Network, note in a March 4 letter that for every \$1 billion invested in water infrastructure, over 23,000 jobs are created. — Lara Beaven (lbeaven@iwpnews.com)

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**HEARING ON PROPOSED CWA RULE PREVIEWS LEGAL ARGUMENTS ON  
FINAL POLICY**

Posted March 01, 2019

Speakers at **EPA's** public hearing on its proposed Clean Water Act (CWA) jurisdiction rule gave early signals of how they plan to attack or defend the eventual final version of the rule in court, with environmentalists hinting at procedural and substantive arguments that they could raise in litigation aimed at striking down a narrow CWA test.

In contrast, supporters of the rule said at the hearing that it would provide clarity on the scope of the water law and do so in way that Congress intended and that complies with Supreme Court precedent, though some signaled they might seek to narrow it even further than the Trump administration has already proposed.

**EPA** and the Army Corps of Engineers co-hosted their only planned hearing on the proposed jurisdiction rule on Feb. 27-28 in Kansas City, KS, offering a forum for supporters and opponents of the standard to voice their comments ahead of the current April 15 deadline for written input.

The agencies argue that the Obama administration's 2015 CWA rule was far broader in scope than the law or federal courts have intended, and they are proposing to replace it with a much narrower version.

While speakers' remarks were limited to three minutes, they offer signs of what stakeholders see as the strengths and weaknesses of the proposal that would greatly narrow the universe of waterbodies subject to the CWA, previewing the arguments in store for court challenges to a final rule.

In their prepared remarks, environmentalists outlined what they see as major legal vulnerabilities in the rule that are both substantive, based on arguments that it does not achieve the CWA's goal of preserving navigable waters' physical chemical and biological health, and procedural such as a failure to analyze relevant science and vagueness on how regulators will decide when smaller or isolated waters are protected.

Meanwhile, remarks from industry and conservative speakers backed a narrow jurisdiction standard on principle, but displayed divisions between groups that support the Trump administration's proposal as issued and others who see it as still too broad.

Such comments indicate the potential for court challenges to the eventual final rule from the right as well as the left, just as some environmental groups argued that the broader rule issued by the Obama administration -- which **EPA** and the Corps are now working to repeal and replace on the grounds that it goes beyond Congress' intent -- was still too narrow.

As proposed, the new CWA standard would limit jurisdiction to navigable waters and tributaries or wetlands that "contribute flow" to those waters during "a typical year." It would for the first time expressly revoke federal authority over "ephemeral" waters that flow only in response to rain and other weather events, as well as dropping the long-standing claim of federal jurisdiction over all interstate waters regardless of their relationship to navigable waterbodies.

Moreover, it would only cover wetlands that directly contact navigable waters or tributaries, a far narrower standard than prior rules that left room for jurisdiction over at least some apparently isolated wetlands if they share a hydrological connection with other waters.

The proposal is largely based on the plurality opinion authored by the late Justice Antonin Scalia in the court's last major CWA jurisdiction case, 2006's *Rapanos, et al., et ux., v. United States*, which said the CWA should only cover "relatively permanent" waters with a "continuous surface connection" to navigable waterbodies. The court in *Rapanos* split 4-4-1, with no opinion commanding majority support.

However, it also uses elements from former Justice Anthony Kennedy's solo concurrence that sets out a broader test based on a "significant nexus" between waterbodies. Lower courts have generally held that Kennedy's test rather than Scalia's is the binding result from *Rapanos*, and it was the basis for the Obama administration's 2015 rule. But observers see the high court's reinforced conservative majority as likely to back Scalia's test if the new rule comes before them. Environmentalists' Comments

Environmentalists' prepared remarks argue that the proposed rule suffers from an array of legal flaws, echoing early signs that they would employ procedural as well as substantive challenges to a final CWA rule.

"First, though the agencies attempt to obscure this fact, the proposal relies on a Supreme Court opinion which

was rejected by five justices and which the lower courts have resoundingly held cannot dictate the extent of Clean Water Act protections. Proceeding down this illegal path is a recipe for the rule's invalidation and will undermine the stability of the law the agencies claim they want. That alone is reason enough to abandon this proposal," Natural Resources Defense Council attorney Jon Devine said in his prepared remarks.

Devine continues that the rule "is full of vague new concepts that will not deliver the on-the-ground clarity the administration repeatedly says it wants," which he says would create a raft of implementation problems. "Polluters and people affected by pollution will somehow have to figure out such things as what a particular water body looks like in a 'typical year' and whether streams are fed by groundwater or not."

Meanwhile, former Obama **EPA** Region 7 Administrator Mark Hague said in his prepared statement that the lack of a scientific analysis underlying the proposal could sink it in court.

"The critical difference between the 2015 rule and this proposal is that the new definition of jurisdictional waters eliminates ephemeral waters, non-navigable interstate waters and many wetlands. Yet the agencies state in this proposal that there are no data available to identify where or how many of these excluded waters and wetlands exist. Public comments by senior agency officials, as reported by several media sources during the public announcement of the proposed rule, indicate that key elements of scientific data are either unknown, difficult to obtain or are unavailable," his remarks say. Supporters' Comments

Meanwhile, Kent Eckles, the Kansas state director for the American Petroleum Institute, used his remarks to voice broad support for the Trump administration's proposal. "The proposed rule properly considers and establishes the outer bounds for their authority under the Act that are consistent with its text, structure, legislative history and applicable Supreme Court precedent," he said.

But he echoed the critics who said the proposed version of the rule is vague, calling for a "uniform" treatment of waters that flow on a seasonal basis.

"While we cannot summarize all our comments in a mere 3 minutes, we encourage the agency to look closely at the workability of its treatment of intermittent and perennial flow, which takes into account case-by-case regional and geographic variations. We believe that a more uniform and precise definition of seasonal surface flow could provide greater clarity to all stakeholders," he said.

By contrast, attorney Anthony Francois of the free-market Pacific Legal Foundation attacked the proposal as overbroad, and argued that any use of the Kennedy test is illegal.

"Unfortunately the proposal misses the mark in important ways due to the agencies effort to read the Rapanos plurality and concurrence coherently . . . If the agencies are going to use the plurality, they must use the plurality as they find it, not blended with the concurrence," his remarks say.

Specifically, he argued that the CWA should exclude any waterbody that is dry for at least a season out of the year -- which would be far more limited than the proposed language, which allows for waters that flow only in a single season to be considered tributaries.

"Proper application of the plurality would limit the proposal to continuously flowing tributaries, not intermittent ones, with a threshold flow criteria, and would allow at most for 90 or 120 days without continuous flow. This is the only way to give effect to the plurality's statement that it is the 'ordinary presence of water' that is determinative, and that tributaries must be what would be called a stream in ordinary parlance," Francois said. -- David LaRoss (dlaross@iwpress.com)

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**From:** Holley-Williams, Sabrina [Holley-Williams.Sabrina@epa.gov]  
**Sent:** 3/7/2019 8:46:24 PM  
**To:** Gilbert, Aaron [Gilbert.Aaron@epa.gov]; Beck, Erik [beck.erik@epa.gov]; Brown, Dan [Brown.Dan@epa.gov]; Burt, Sally [Burt.Sally@epa.gov]; Chow, James [chow.james@epa.gov]; Conway, Timothy [Conway.Tim@epa.gov]; Webster, David [Webster.David@epa.gov]; Davis, Betsy [davis.betsy@epa.gov]; Dierker, Carl [Dierker.Carl@epa.gov]; Edmondson, Lucy [Edmondson.Lucy@epa.gov]; Hong, Jeanhee [Hong.Jeanhee@epa.gov]; Jerison, Joanna [Jerison.Joanna@epa.gov]; Kilborn, John [Kilborn.John@epa.gov]; Kipp, Katrina [kipp.katrina@epa.gov]; Kopf, Jeff [Kopf.Jeff@epa.gov]; Berry, Laura J. [Berry.Lauraj@epa.gov]; Levin, Ronnie [Levin.Ronnie@epa.gov]; Levinson, Sarah [Levinson.Sarah@epa.gov]; Martinez, Hugh [martinez.hugh@epa.gov]; Millan-Ramos, Gerardo [Millan-Ramos.Gerardo@epa.gov]; Moraff, Kenneth [Moraff.Ken@epa.gov]; Ng, ManChak [Ng.ManChak@epa.gov]; Sherman, RuthAnn [sherman.ruthann@epa.gov]; Simcox, Alison [simcox.alison@epa.gov]; Smith, Catherine [smith.catherine@epa.gov]; Springborg, Denise [Springborg.Denise@epa.gov]; Thompson, Heather [Thompson.Heather@epa.gov]; Viggiani, Steven [viggiani.steven@epa.gov]; Vu, Chau [Vu.Chau@epa.gov]; Wong, Shutsu [Wong.Shutsu@epa.gov]; Woodward, Kathleen [Woodward.Kathleen@epa.gov]  
**Subject:** Inside EPA - 03/08/2019

- Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure

Former Maine environment chief Paul Mercer has declined the role of EPA Region 1 administrator on the day he was due to start the position, following environmentalists' criticism that his work under the state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

- Former CASAC Chair Alleges 'Procedural Irregularities' In NAAQS Reviews

A former chairman of EPA's Clean Air Scientific Advisory Committee (CASAC) is alleging "procedural irregularities" in the conduct of current panel chairman Tony Cox, charging it further undermines the credibility of the EPA's truncated process for reviewing national ambient air quality standards (NAAQS).

- EPA Touts 10-Year TRI Cuts To Bolster Rollbacks Despite Annual Increase

Top EPA officials touted just-released analysis of the Toxic Release Inventory (TRI), which show a decline in releases over 10 years, to renew arguments that such improvements show that the Trump administration's deregulatory efforts can be advanced without increasing risks, though the analysis showed an increase in total annual releases.

- New Mexico Court Push May Limit Impact Of Key Suit On State PFAS Powers

New Mexico officials are seeking to steer Defense Department litigation challenging their permit restrictions on per- and polyfluoroalkyl substances (PFAS) to state court, a move that if successful could limit any precedent the litigation may set on federal officials' ability to challenge such state actions.

- Bipartisan House Bill Would Boost EPA Water Infrastructure Funding Levels

A bipartisan group of House lawmakers has introduced legislation to boost authorized levels of EPA's clean water state revolving fund (SRF) to \$4 billion annually, more than double its current appropriations, as well as authorize billions of dollars to address sewer overflows, fund states' Clean Water Act (CWA) implementation and augment existing sources of water.

- Eastern States, Senate Democrats Fault EPA Interstate Air Pollution Policy

Eastern states and Senate Democrats are attacking what they say is EPA's inadequate approach to policies for curbing interstate air pollution hindering states' attainment of federal air standards, with several states ramping up technical and legal challenges to the agency while senators attack funding cuts to key emissions programs.

- Gorsuch Claim On Deference's Decline Raises Stakes For EPA's Discretion

Supreme Court Justice Neil Gorsuch in a new dissent claims there is "mounting criticism" of the *Chevron* principle that gives primacy to EPA and other agencies' interpretations of unclear laws, raising the stakes for pending cases that could give the court's strengthened conservative majority an opening to narrow or scrap the doctrine.

- Senate Energy Panel Seeks To Spur 'Pragmatic' Climate Policy Discussions

A Senate energy committee hearing on the power sector and climate change -- billed as the committee's first hearing to explicitly address the issue in five years -- focused largely on low-carbon technology and incentives to reduce carbon emissions, omitting some of the highly partisan fights over climate policy that have gained steam in recent months.

- Democrats Seek Inquiries After GAO Finds EPA Dropped IRIS Assessments

Democratic lawmakers are questioning EPA's decision to shrink its influential risk assessment program and seeking an ethics investigation into the top Trump research appointee's role, after Congress' watchdog raised questions about EPA's

priority-setting process, which provided no explanation for a series of dropped assessments, including that of formaldehyde.

- ACWA Backs EPA's 'Cooperative Federalism' But Seeks Greater State Role

Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators (ACWA), is welcoming the Trump administration's "cooperative federalism" push to give states more environmental policymaking authority but urging greater state input on issues like emerging contaminants and the Clean Water Act's (CWA) scope.

- Judge Rejects Novel Claim That Air Act Fails To Grant Injunctive Relief Power

A federal judge has rejected a novel claim by Missouri-based utility Ameren that he lacks Clean Air Act authority to order injunctive relief to remedy past harms, dismissing what sources describe as a long-shot argument that runs counter to what EPA -- and federal courts -- have successfully been doing for decades.

- High Court Denies Review Of Challenge To EPA 'Veto' Of CWA 404 Permits

The Supreme Court has rejected a petition that sought judicial review of EPA's "objections" to proposed Clean Water Act (CWA) dredge-and-fill permits, letting stand an appeals court's decision that requires applicants to instead wait until a formal agency approval or denial before challenging the permitting process.

- Hearing On Proposed CWA Rule Previews Legal Arguments On Final Policy

Speakers at EPA's public hearing on its proposed Clean Water Act (CWA) jurisdiction rule gave early signals of how they plan to attack or defend the eventual final version of the rule in court, with environmentalists hinting at procedural and substantive arguments that they could raise in litigation aimed at striking down a narrow CWA test.

- District Judge Finds EPA Liability Under Superfund For Gold King Mine Spill

A federal district judge has ruled that EPA faces liability under the Superfund law for its accidental massive wastewater spill from the Gold King Mine cleanup in 2015, backing state and private plaintiffs' claims that federal cleanup projects like the mine can be subject to the statute's application to waste "operators," "arrangers," and "transporters."

- EPA Touts Enforcement Deference Policy But Also Eyes State 'Assists'

A year after issuing interim guidance that mandates "deference" to states in environmental enforcement, top EPA officials are touting the Trump administration's success in shifting enforcement action to the states, though they are weighing changes to the guidance even as Democrats and environmentalists continue to attack the strategy.

- EPA Urges IRS To Align Tax Law Incentives With Brownfields Definition

EPA's Office of Brownfields and Land Revitalization (OBLR) is urging the Internal Revenue Service (IRS) to align definitions in a proposed rule to implement investment incentives in the 2017 Tax Cuts and Jobs Act with those in the brownfields program in order to spur redevelopment of former industrial sites.

- Escalating Controversy, McCollum Seeks EPA Region 5 Permit Comments

Rep. Betty McCollum (D-MN), chair of the appropriations subcommittee that oversees EPA's budget, is urging the agency to release Region 5 staffers' comments criticizing a Minnesota mine permit that political leaders allegedly suppressed, escalating a controversy that has already prompted calls for an Inspector General (IG) review.

- Water Sector's Report Could Boost EPA Bid To Consolidate Small Utilities

A coalition of wastewater and drinking water utilities in a new report is recommending steps to encourage the consolidation of small utilities, which could boost EPA's bid for increased collaboration among utilities and help shape the agency's response to a statutory mandate for crafting rules on when states can mandate consolidation.

- Senate GOP Confirms Wheeler As EPA Chief, Amid Democrats' Attacks

Senate Republicans have voted to confirm Andrew Wheeler to be the Trump EPA's second permanent administrator, after the chamber's Democrats uniformly rejected the nomination while slamming the agency's rollbacks of climate and other regulations.

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**Sabrina Holley-Williams** | Region 1 Library Director | ASMS contractor

(617) 918-1991 | [holley-williams.sabrina@epa.gov](mailto:holley-williams.sabrina@epa.gov)

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Library Hours: M-Th 9am-Noon, 12:30-3:30pm | [Region 1 Library Intranet](#)

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Message

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**From:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Sent:** 3/1/2019 2:05:03 PM  
**To:** Dierker, Carl [Dierker.Carl@epa.gov]; Jensen, LeAnn [Jensen.Leann@epa.gov]  
**CC:** Griffo, Shannon [Griffo.Shannon@epa.gov]  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

Just remember, please, that you can't date stamp the document until Monday, 3/4 because it's addressed to Mercer as the RA.

---

**From:** Dierker, Carl  
**Sent:** Thursday, February 28, 2019 6:20 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Jensen, LeAnn <Jensen.Leann@epa.gov>  
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

THanks for all your help finalizing this document. Dave said he'd review tomorrow, sign and PDF to us, so I think we'll be in good shape.

Will look forward to seeing Justina on Skype Monday at 12:30 for new RA's initial ethics briefing!

Thanks again,  
Carl

---

**From:** Fugh, Justina  
**Sent:** Thursday, February 28, 2019 12:58 PM  
**To:** Dierker, Carl <Dierker.Carl@epa.gov>; Jensen, LeAnn <Jensen.Leann@epa.gov>  
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

Hi,

Two minor notes:

- 1) I got confirmation from HR less an hour ago that they have reached out to Mr. Mercer to make him the official offer. So they do expect him to start work on Monday; and

2)

## Ex. 5 Deliberative Process

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



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**From:** Griffo, Shannon  
**Sent:** Thursday, February 28, 2019 12:42 PM  
**To:** Dierker, Carl <Dierker.Carl@epa.gov>; Jensen, LeAnn <Jensen.Leann@epa.gov>  
**Cc:** Szaro, Deb <Szaro.Deb@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

Hi LeAnn,

Per our discussion just now, we are good with those additions. **Ex. 5 Deliberative Process**  
**Ex. 5 Deliberative Process**  
**Ex. 5 Deliberative Process** see attached.

You can definitely present it to Dave today for signature. But since it is addressed to Mr. Mercer as Regional Administrator, it should be dated for after he's started - March 4<sup>th</sup> if that's his official start date.

Please let us know if you have any questions.

Thanks!  
Shannon

Shannon Griffo  
Ethics Attorney  
Office of General Counsel, Ethics  
U.S. Environmental Protection Agency  
(202) 564-7061  
[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

---

**From:** Dierker, Carl  
**Sent:** Thursday, February 28, 2019 12:02 PM  
**To:** Jensen, LeAnn <Jensen.Leann@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>  
**Cc:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

Thanks, LeAnn, I like both of your suggested additions – very helpful.

---

**From:** Jensen, LeAnn  
**Sent:** Thursday, February 28, 2019 10:20 AM  
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>  
**Cc:** Szaro, Deb <Szaro.Deb@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>  
**Subject:** Paul Mercer **Ex. 5 Deliberative Process**

Shannon –

Thank you for **Ex. 5 Deliberative Process** for our new Regional Administrator, Paul Mercer. We have reviewed the memo and made a couple of suggested edits, which are highlighted in the attached draft. Please let me know if the suggested edits give you pause.

Dave Cozad is in the region today. If you are comfortable with the memo, I could attempt to get his signature while he is here. If you would prefer that he review it when he gets back to the office, or if I am unable to get his signature today,

please be reminded that Mr. Mercer may be starting on Monday. It would be great if we could have the signed memo ready for him at his ethics briefing.

Thanks again,

LeAnn  
617-918-1072

Message

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**From:** Jensen, LeAnn [Jensen.Leann@epa.gov]  
**Sent:** 2/28/2019 2:35:07 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]  
**CC:** Dierker, Carl [Dierker.Carl@epa.gov]  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

Thanks Deb. I'll send the memo to OGC with the highlighted edits.

---

**From:** Szaro, Deb  
**Sent:** Thursday, February 28, 2019 6:54 AM  
**To:** Jensen, LeAnn <Jensen.Leann@epa.gov>  
**Cc:** Dierker, Carl <Dierker.Carl@epa.gov>  
**Subject:** RE: Paul Mercer **Ex. 5 Deliberative Process**

Thanks LeAnn. I have no additional comments.

---

**From:** Jensen, LeAnn  
**Sent:** Wednesday, February 27, 2019 8:03 PM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Cc:** Dierker, Carl <Dierker.Carl@epa.gov>  
**Subject:** Paul Mercer **Ex. 5 Deliberative Process**

Deb –

# Ex. 5 Deliberative Process

OGC would like us to respond to this draft by COB Thursday. Please let me know if you have any comments or improvements to this draft.

Thanks,

LeAnn  
8-1072

Message

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**From:** Lindsay, Jane [lindsay.jane@epa.gov]  
**Sent:** 2/27/2019 9:30:30 PM  
**To:** Moraff, Kenneth [Moraff.Ken@epa.gov]; Olson, Bryan [Olson.Bryan@epa.gov]; McGuire, Karen [McGuire.Karen@epa.gov]; Johnson, Arthur [Johnson.Arthur@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]; Norcross, Jeffrey [Norcross.Jeffrey@epa.gov]; Wells, Sharon [Wells.Sharon@epa.gov]; Hunter, Johanna [Hunter.Johanna@epa.gov]; Dixon, Sean [dixon.sean@epa.gov]; Dierker, Carl [Dierker.Carl@epa.gov]  
**CC:** Audet, Matthew [Audet.Matthew@epa.gov]  
**Subject:** Calendar for new RA for next two weeks  
**Attachments:** Mercer from 3.4 to 3.15.pdf

Hello,

Attached is actually Deb's outlook calendar – to which we have added meetings in blue (general) or green (for administrative tasks) for new RA.

(Deb will be sitting in on most of the meetings for the first few weeks) -

We'll fill in specific issue briefings before the end of this week – but for now we are sharing what we have -

We'll be populating your calendars shortly with actual appointments –

I've tried to schedule around your other commitments – but if we need to fine tune am glad to do so –

Thanks for your flexibility in scheduling,  
Jane

# March 4, 2019 - March 10, 2019

March 2019							April 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

## Monday, March 4

- New RA start date
- 7:30am - Enter PP time ☺
- 9:00am - 9:45am Administrative with OARM - swearing in, badge, paperwork
- 10:00am - 10:55am All Staff - Meet and Greet
- 11:00am - 12:00pm Senior Leadership Team Meeting (Keough) (Call-in 617 918-2222; conference code 71) **Conference Line/Code / Ex. 6** Szaro, Deb ☺
- 12:00pm - 2:00pm holding for ethics with Justina, Carl, Tim and Deb
- 2:00pm - 3:00pm Senior Staff ☺
- 3:15pm - 3:45pm Weekly with OARM (Deb's office) - Szaro, Deb ☺
- 3:30pm - 4:30pm Administrative - Art and Carl (directory of HQ guidance)
- 3:45pm - 5:00pm No Meetings ☺

## Wednesday, March 6

- 9:00am - 10:30am OARM (OARM Office) - Szaro, Deb ☺
- 10:45am - 11:45am Realignment
- 12:15pm - 1:15pm Office Presentation - OARM
- 1:30pm - 3:00pm E-Enterprise (EELC) Conference Call / (888) 326-7492 / Code: 57761271# (WJCN 3530) - Darwin, Henry
- 2:00pm - 3:00pm Office Presentation - ORA/OPA
- 3:00pm - 4:00pm Administrative
- 3:45pm - 5:00pm No Meetings ☺

## Friday, March 8

- Flex Day ☺
- 3:45pm - 5:00pm No Meetings ☺

## Tuesday, March 5

- 8:30am - 9:00am Sean (Deb's office) - Szaro, Deb ☺
- 9:00am - 10:30am Business Review Meeting (Keough Room / Call in 617 918-2222; conference code 71) **Conference Line/Code / Ex. 6** Szaro, Deb ☺
- 10:30am - 12:00pm hold for TRI Announcement
- 10:45am - 12:15pm Administrative - Brenda for travel, time and attendance and transit
- 12:00pm - 4:00pm hold for get the lead out briefing
- 12:30pm - 1:00pm hold for Amy Miller?
- 1:30pm - 2:30pm Building Tour
- 3:00pm - 4:00pm FOIA and Records Management
- 3:45pm - 5:00pm No Meetings ☺

## Thursday, March 7

- 7:00am - 7:30am HQ Weekly Report ☺
- 7:30am - 8:00am Change LAN password C-A-D - Szaro, Deb ☺
- 8:30am - 1:00pm Get the Lead Out Summit (Westboro)
- 9:30am - 10:00am Sean - check-in (Deb's office) - Szaro, Deb ☺
- 10:15am - 11:15am Office Presentation - OSRR
- 12:00pm - 1:00pm 2019 Deputy Regional Administrator Teleconference ( Call-in: +1 (202) 991-0477; **Conference Line/Code / Ex. 6** WJCN 3426c) - RegionalOperations ☺
- 1:00pm - 2:00pm Administrative
- 1:00pm - 2:00pm Budget Formulation System Senior Leader Dashboard (Conf Call #: 617 918 2222 / Conf Code: **Conference Line/Code / Ex. 6**)
- 2:15pm - 3:15pm Issue Briefing
- 3:45pm - 5:00pm No Meetings ☺
- 4:00pm - 5:00pm Regional Realignment (DCRoomARN3330/DC-AR-OARM) - Vizian, Donna ☺

## Saturday, March 9

## Sunday, March 10

# March 11, 2019 - March 17, 2019

March 2019							April 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

## Monday, March 11

- 10:00am - 12:00pm Senior Leadership Team Meeting (Keough (Call-in 617 918-2222; conference code **Conference Line/Code / Ex. 6** Szaro, Deb ☺
- 12:30pm - 1:30pm Office Presentation - OES
- 1:00pm - 2:00pm Citizen Science ( (Call in 617 918-2222; conference **Conference Line/Code / Ex. 6** Szaro, Deb ☺
- 2:00pm - 3:00pm Senior Staff ☺
- 3:00pm - 4:00pm Administrative
- 3:15pm - 3:45pm Weekly with OARM (Deb's office) - Szaro, Deb ☺
- 3:45pm - 5:00pm No Meetings ☺

## Tuesday, March 12

- 8:30am - 9:00am Sean (Deb's office) - Szaro, Deb ☺
- 9:00am - 9:45am QAFAP Briefing (Deb's office or Belknap - teleconference (on request)) - Szaro, Deb
- 10:00am - 11:00am Office Presentation - OEME
- 11:00am - 12:00pm UAV/Satellite/Drone Data (DCRoomWest1426/OPEI) - Shaw, Nena
- 1:00pm - 2:00pm Issue Briefing
- 2:30pm - 3:30pm Labor/Management Briefing prior to Union Meeting
- 3:45pm - 5:00pm No Meetings ☺

## Wednesday, March 13

- 7:30am - Prior PP Approval ☺
- 9:00am - 10:30am OARM (OARM Office) - Szaro, Deb ☺
- 10:30am - 11:30am Office Presentation - OEP
- 11:00am - 12:00pm Citizen Science (Deb's Office (Call in 617 918-2222; conference code **Conference Line/Code / Ex. 6** Szaro, Deb ☺
- 12:00pm - 1:00pm Front Office Staff Lunch - Brown Bag (Keough)
- 2:00pm - 3:00pm ELMS Briefing
- 2:00pm - 3:00pm Regional Call (Call in: 1-484-352-3221; Code: **Conference Line/Code / Ex. 6** Rodrigues, Cecil
- 3:45pm - 5:00pm No Meetings ☺

## Thursday, March 14

- 7:00am - 7:30am HQ Weekly Report ☺
- 7:30am - Current PP Approval ☺
- 8:30am - 9:00am ELMS Leadership (Deb's office (Call-in - 617 918-2222; conference code **Conference Line/Code / Ex. 6** Szaro, Deb ☺
- 9:30am - 10:00am Sean - check-in (Deb's office) - Szaro, Deb ☺
- 10:00am - 10:45am Look-out with OPA (Belknap or teleconference) Lindsay, Jane
- 11:00am - 12:00pm Office Presentation - EJ
- 12:00pm - 1:00pm DRA+DAA Business Operations Videoconference (EPA HQ - WJCN 3346 (OARM's Conference Room)
- 1:30pm - 2:30pm Administrative
- 2:45pm - 3:45pm Office Presentation - OCR
- 3:45pm - 5:00pm No Meetings ☺
- 4:00pm - 5:00pm Regional Realignment (DCRoomARN3330/DC-AR-OARM) - Vizian, Donna ☺

## Friday, March 15

- 10:00am - 1:00pm Water Quality Standards (312 Conco Road, Portland) - Szaro, Deb
- 3:45pm - 5:00pm No Meetings ☺

## Saturday, March 16

## Sunday, March 17

Message

---

**From:** Griffo, Shannon [Griffo.Shannon@epa.gov]  
**Sent:** 2/27/2019 6:45:18 PM  
**To:** Dierker, Carl [Dierker.Carl@epa.gov]; Jensen, LeAnn [Jensen.Leann@epa.gov]  
**CC:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Subject:** **Deliberative Process / Ex. 5**  
**Attachments:** Paul Mercer **Ex. 5 Deliberative Process**

Hi Carl and LeAnn,

Attached is the draft **Ex. 5 Deliberative Process** for Paul Mercer. We aren't sure whether he's officially starting this upcoming Monday, but we would like to get this signed by Dave Cozad very soon.

Please take a look at the draft and let us know if you have any comments or concerns.

**Ex. 5 Deliberative Process**

**Ex. 5 Deliberative Process**

# Ex. 5 Deliberative Process

Thanks,  
Shannon

Shannon Griffo  
Ethics Attorney  
Office of General Counsel, Ethics  
U.S. Environmental Protection Agency  
(202) 564-7061  
Griffo.Shannon@epa.gov

Message

---

**From:** Dierker, Carl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D1F9B7627F8E4EFAB65F9E9513BF323E-DIERKER, CARL]  
**Sent:** 3/6/2019 2:19:50 PM  
**To:** Fugh, Justina [Fugh.Justina@epa.gov]  
**Subject:** RE: Paul Mercer apparently will not be coming

Bizarre!

-----Original Message-----

From: Fugh, Justina  
Sent: Tuesday, March 05, 2019 4:51 PM  
To: Dierker, Carl <Dierker.Carl@epa.gov>  
Subject: RE: Paul Mercer apparently will not be coming

I haven't heard anything. So weird!

-----Original Message-----

From: Dierker, Carl  
Sent: Saturday, March 02, 2019 1:48 PM  
To: Fugh, Justina <Fugh.Justina@epa.gov>  
Subject: Re: Paul Mercer apparently will not be coming

Am dying to know what changed his mind, if you heard!

Sent from my iPhone

> On Mar 1, 2019, at 2:37 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:  
>  
> Breaking news from HR:  
> Per Ryan Jackson at 12:48 p.m. today, "Mr. Mercer has decided not to join EPA."  
>  
> Sent from my iPhone



Message

**From:** Dierker, Carl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D1F9B7627F8E4EFAB65F9E9513BF323E-DIERKER, CARL]  
**Sent:** 2/28/2019 11:03:14 PM  
**To:** Moraff, Kenneth [Moraff.Ken@epa.gov]; Jensen, LeAnn [Jensen.Leann@epa.gov]  
**CC:** 'Tim Williamson' [Williamson.Tim@epa.gov]  
**Subject:** RE: Q r **Deliberative Process / Ex. 5**

# Deliberative Process / Ex. 5

LeAnn, feel free to augment or edit my response.

Thanks,  
Carl

---

**From:** Moraff, Kenneth  
**Sent:** Thursday, February 28, 2019 5:17 PM  
**To:** Dierker, Carl <Dierker.Carl@epa.gov>  
**Subject:** Q r **Deliberative Process / Ex. 5**

Carl – do you know the answer? **Deliberative Process / Ex. 5**

## Deliberative Process / Ex. 5

Ken

---

**From:** Weitzler, Ellen  
**Sent:** Thursday, February 28, 2019 4:24 PM  
**To:** Moraff, Kenneth <Moraff.Ken@epa.gov>; Hamjian, Lynne <Hamjian.Lynne@epa.gov>  
**Cc:** Leiby, Anne <Leiby.Anne@epa.gov>  
**Subject:** RA signature **Deliberative Process / Ex. 5**

Hi Ken and Lynne,

# Deliberative Process / Ex. 5

Thanks

Ellen

Ellen Weitzler, P.E.  
Municipal Permits Section Chief  
USEPA-New England Region 1  
5 Post Office Square, Suite 100, OEP06-4  
Boston, MA 02109-3912

Tel 617-918-1582

## Appointment

---

**From:** Dierker, Carl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d1f9b7627f8e4efab65f9e9513bf323e-Dierker, Carl]  
**Sent:** 2/28/2019 5:24:12 PM  
**To:** R1 Events [R1\_Events@epa.gov]  
**Subject:** Accepted: Meet and Greet with our new RA, Paul Mercer  
**Location:** Leighton Hall with VTC to the Kennebec Room  
**Start:** 3/4/2019 3:00:00 PM  
**End:** 3/4/2019 4:00:00 PM  
**Show Time As:** Busy

Message

---

**From:** Dierker, Carl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D1F9B7627F8E4EFAB65F9E9513BF323E-DIERKER, CARL]  
**Sent:** 3/2/2019 6:49:50 PM  
**To:** Cozad, David [Cozad.David@epa.gov]  
**Subject:** Re: Paul Mercer apparently will not be coming

Sorry 'bout that—would love to know what changed his mind, if you hear!

Sent from my iPhone

> On Mar 1, 2019, at 6:13 PM, Cozad, David <Cozad.David@epa.gov> wrote:  
>  
> And I had just signed and pdf'd the impartiality waiver !  
>  
> Sent from my iPhone  
>  
>> On Mar 1, 2019, at 4:03 PM, Dierker, Carl <Dierker.Carl@epa.gov> wrote:  
>>  
>> Thanks for update, Justina, since I wasn't aware. And Deb, I'll keep quiet until there's an announcement.  
>>  
>> -----Original Message-----  
>> From: Szaro, Deb  
>> Sent: Friday, March 01, 2019 2:39 PM  
>> To: Fugh, Justina <Fugh.Justina@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>  
>> Cc: OGC Ethics <OGC\_Ethics@epa.gov>  
>> Subject: RE: Paul Mercer apparently will not be coming  
>>  
>> Thanks, I knew. Carl, please do not forward or discuss with anyone.  
>>  
>> -----Original Message-----  
>> From: Fugh, Justina  
>> Sent: Friday, March 01, 2019 2:37 PM  
>> To: Cozad, David <Cozad.David@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>  
>> Cc: OGC Ethics <OGC\_Ethics@epa.gov>  
>> Subject: Paul Mercer apparently will not be coming  
>>  
>> Breaking news from HR:  
>> Per Ryan Jackson at 12:48 p.m. today, "Mr. Mercer has decided not to join EPA."  
>>  
>> Sent from my iPhone

Message

---

**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 3/1/2019 5:43:58 PM  
**To:** Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** Fwd: [SPAM-Sender] Re: Ryan

Sent from my iPhone

Begin forwarded message:

**From:** Paul Mercer { **Personal Matters / Ex. 6** }  
**Date:** March 1, 2019 at 12:40:20 PM EST  
**To:** "Szaro, Deb" <Szaro.Deb@epa.gov>  
**Subject:** [SPAM-Sender] Re: Ryan

## Personal Matters / Ex. 6

On Mar 1, 2019, at 12:13 PM, Szaro, Deb <Szaro.Deb@epa.gov> wrote:

**Personal Matters / Ex. 6**

Sent from my iPhone

Message

---

**From:** Bender, Emily [Bender.Emily@epa.gov]  
**Sent:** 3/1/2019 2:58:57 PM  
**To:** Senn, John [Senn.John@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** RE: Paul Mercer appointment?

Ok thanks for letting me know. I haven't gotten one yet.

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

---

**From:** Senn, John  
**Sent:** Friday, March 01, 2019 9:57 AM  
**To:** Bender, Emily <Bender.Emily@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>  
**Subject:** RE: Paul Mercer appointment?

He also left me a VM a few minutes ago.

---

**From:** Bender, Emily  
**Sent:** Friday, March 1, 2019 9:56 AM  
**To:** Gutro, Doug <Gutro.Doug@epa.gov>  
**Cc:** Senn, John <Senn.John@epa.gov>  
**Subject:** FW: Paul Mercer appointment?

Can we discuss...

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

**From:** Chris Lisinski <clisinski@statehousenews.com>  
**Sent:** Friday, March 01, 2019 9:48 AM  
**To:** Senn, John <Senn.John@epa.gov>; Bender, Emily <Bender.Emily@epa.gov>  
**Subject:** Paul Mercer appointment?

Hi John and Emily,

I'm a reporter with the State House News Service. Dave Deegan's automatic reply suggested I contact you. I wanted to inquire about the WGBH report that Paul Mercer has been announced to staff as the new head of the EPA's New England region. Is that indeed the case? What information can you provide at this point?

You can reach me by email and at (617) 722-2439. Thank you for your time.

Best,  
Chris Lisinski

--

Chris Lisinski  
Reporter, State House News Service  
(617) 722-2439

Message

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**From:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Sent:** 3/1/2019 12:26:08 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]; Press [Press@epa.gov]  
**CC:** Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** RE: new england EPA head named?

Can you send me the all employee message the article refers to? Thanks ng

---

**From:** Deegan, Dave  
**Sent:** Thursday, February 28, 2019 5:19 PM  
**To:** Press <Press@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Cc:** Gutro, Doug <Gutro.Doug@epa.gov>  
**Subject:** Fwd: new england EPA head named?

Assuming HQ will decide how to handle this. Thanks!

Thanks,  
Dave

-----  
Dave Deegan  
US EPA, Region 1  
617.918.1017 - office  
617.594.7068 - mobile  
[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)

Begin forwarded message:

**From:** "Marcelo, Philip" <PMarcelo@ap.org>  
**Date:** February 28, 2019 at 4:48:29 PM EST  
**To:** "[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)" <[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)>  
**Subject:** new england EPA head named?

hey David,

able to confirm this report that the ex-maine EPA head will be taking over the regional one?  
<https://www.wgbh.org/news/local-news/2019/02/28/paul-mercero-appointed-to-head-new-england-epa-office>

thanks!

---

**Philip Marcelo**  
Reporter  
The Associated Press  
129 South Street  
Boston, MA 02111  
Office: 617.357.8100  
Cell: 617.320.7966  
[pmarcelo@ap.org](mailto:pmarcelo@ap.org)  
[www.twitter.com/philmarcelo](https://www.twitter.com/philmarcelo)





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Message

---

**From:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Sent:** 2/28/2019 10:17:54 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]; Bender, Emily [Bender.Emily@epa.gov]; Senn, John [Senn.John@epa.gov]; Melanson, Kate [Melanson.Kate@epa.gov]  
**Subject:** WGBH Radio: Paul Mercer Appointed To Head New England EPA Office

I have an inquiry from AP re this story and will send it to HQ.

<https://www.wgbh.org/news/local-news/2019/02/28/paul-merceroappointed-to-head-new-england-epa-office>

Thanks,  
Dave

-----  
Dave Deegan  
US EPA, Region 1  
617.918.1017 - office  
617.594.7068 - mobile  
[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)

Message

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**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 2/28/2019 5:47:12 PM  
**To:** Paul Mercer [Personal Address / Ex. 6]  
**CC:** Bender, Emily [Bender.Emily@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** Draft Talking Points  
**Attachments:** RA Paul Mercer Welcome (003).docx

Attached and copied below are draft talking points for your consideration/use. Thanks to Emily for drafting.

**Regional Administrator, Paul Mercer**  
**Welcome Breakfast**  
**March 4, 2019**

**Deliberative Process / Ex. 5**

# **Deliberative Process / Ex. 5**

Message

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**From:** Bender, Emily [Bender.Emily@epa.gov]  
**Sent:** 2/28/2019 5:12:00 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** DRAFT RA Paul Mercer Welcome.docx  
**Attachments:** RA Paul Mercer Welcome.docx

Hi Deb and Doug-

Here are updated draft remarks. Let me know your thoughts and comments.

Thanks

Emily

**Regional Administrator, Paul Mercer**  
**Welcome Breakfast**  
**March 4, 2019**

# **Deliberative Process / Ex. 5**

# **Deliberative Process / Ex. 5**

Message

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**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 2/28/2019 5:05:22 PM  
**To:** Gutro, Doug [Gutro.Doug@epa.gov]  
**CC:** Senn, John [Senn.John@epa.gov]; Bender, Emily [Bender.Emily@epa.gov]; Melanson, Kate [Melanson.Kate@epa.gov]; Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** Re: [SPAM-Sender] Fwd: FOR REVIEW// EPA Announces Appointment of Paul Mercer to Region 1 Administrator

Let's get this wrapped up quickly

Sent from my iPhone

On Feb 28, 2019, at 12:02 PM, Gutro, Doug <[Gutro.Doug@epa.gov](mailto:Gutro.Doug@epa.gov)> wrote:

Do not share

Sent from my iPhone

Begin forwarded message:

**From:** Paul Mercer **Personal Email / Ex. 6**  
**Date:** February 28, 2019 at 11:11:04 AM EST  
**To:** [Gutro.Doug@epa.gov](mailto:Gutro.Doug@epa.gov)  
**Subject:** [SPAM-Sender] Fwd: FOR REVIEW// EPA Announces Appointment of Paul Mercer to Region 1 Administrator

Begin forwarded message:

**From:** "Hewitt, James" <[hewitt.james@epa.gov](mailto:hewitt.james@epa.gov)>  
**Date:** February 28, 2019 at 9:25:57 AM EST  
**To:** **Personal Email / Ex. 6**  
**Subject:** FOR REVIEW// EPA Announces Appointment of Paul Mercer to Region 1 Administrator

**Deliberative Process / Ex. 5**

EPA Announces Appointment of Paul Mercer to Region 1  
Administrator

**Deliberative Process / Ex. 5**



Mr. Mercer most recently served as Commissioner of the Maine Department of Environmental Protection (MeDEP) under former Governor Paul LePage where he worked collaboratively with constituents to promote the needs of the state's environmental issues and its economy. Prior to joining the governor's cabinet, Paul held the position of professor and administrator at the Maine Maritime Academy where he introduced courses and programs incorporating environmental engineering and ethics. While working as a professor, he presented to the Air Bureau of MeDEP designed to provide compliance inspectors a better understanding of combustion and its relationship to air emissions.

Additionally, Mr. Mercer currently serves as a board member of the Environmental Research Institute of the States that has allowed him to interreact with EPA's Office of Research and Development (ORD) and promote the need for ORD research to align with State's needs.

"As Maine's DEP Commissioner, Paul Mercer played a leading role in protecting the state's unique array of natural resources, which are an integral part of its economy," said **EPA Acting Administrator Andrew Wheeler**. "His wealth of experience and ability to work closely with the regulated community and concerned citizens demonstrate that he will provide outstanding leadership for Region 1."

#### **Quotes of Support**

"Much of Paul's experience has been in the states within Region 1. He has the leadership roles in a variety of energy and environmental projects, including biofuels, waste-to-energy, BACT applications with combustion emissions, natural gas, and landfill gas," said **U.S. Senator Susan Collins**. "As Commissioner of the Maine DEP, Paul was well-respected by the regulated community in the state...I am pleased to recommend Paul for the Region 1 Administrator position."

"Mercer has worked collaboratively with business and environmental advocates, as well as state and federal agencies, to move our state's economy forward while ensuring our environment is protected," said **Governor Paul LePage**. "His innovative leadership and balanced approach has helped business to grow and prosper while still taking care to preserve our natural resources."

"The partnership between EPA and state environmental agencies is incredibly important," said **Vermont Department of Environment Quality Secretary Julie Moore**. "Throughout his tenure at Maine DEP Paul built strong relationships with the other New England environmental agencies that will allow him to jump in to this role immediately and effectively. I look forward to the opportunity to continue to work with Paul in his new capacity."

"I am pleased to hear of Paul Mercer's appointment as the EPA Region 1 administrator," said **Bucksport Town Manager Susan Lessard**. "I had the pleasure of working with Paul as a member of the Maine Board of Environmental Protection when he served as the Commissioner of Environmental Protection in Maine. I found him to be a critical thinker, a

person with both feet on the ground, a forward-thinking problem solver, and a person committed to finding a way for there to be winners and winners - instead of winners and losers."

James Hewitt  
Environmental Protection Agency  
Press Secretary  
(202) 578-6141

Message

---

**From:** Bender, Emily [Bender.Emily@epa.gov]  
**Sent:** 2/28/2019 4:36:34 PM  
**To:** Melanson, Kate [Melanson.Kate@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]; Deegan, Dave [Deegan.Dave@epa.gov]  
**Subject:** RE: Ed Colletta just called about PR for RA

After talking to Doug, I just left Nancy a VM, I'll email her too. I'll let you know if/when I hear back.

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

---

**From:** Bender, Emily  
**Sent:** Thursday, February 28, 2019 11:30 AM  
**To:** Melanson, Kate <Melanson.Kate@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>; Deegan, Dave <Deegan.Dave@epa.gov>  
**Subject:** RE: Ed Colletta just called about PR for RA

Doug- do you want to call Nancy and find out what they are looking for, and then maybe Kate can send an email to the states to let them know???

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

---

**From:** Melanson, Kate  
**Sent:** Thursday, February 28, 2019 11:28 AM  
**To:** Bender, Emily <Bender.Emily@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>; Deegan, Dave <Deegan.Dave@epa.gov>  
**Subject:** RE: Ed Colletta just called about PR for RA

Clarification would be helpful.

MaineDEP also reached out wondering.

Thanks!

---

**From:** Bender, Emily  
**Sent:** Thursday, February 28, 2019 11:25 AM  
**To:** Melanson, Kate <Melanson.Kate@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>; Deegan, Dave

<Deegan.Dave@epa.gov>

**Subject:** Ed Colletta just called about PR for RA

**Importance:** High

Hi All-

I just got off the phone with Ed Colletta.

Apparently the DC office reached out to him for a quote for a PR to announce Paul Mercer. He has supplied that, but he just found out they also reached out to the Governor's office.

He wants to be sure they are being consistent with the other states about who to supply a quote from...

I told him I'd call him back to get him clarification.

Thanks

Em

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

Message

---

**From:** Melanson, Kate [Melanson.Kate@epa.gov]  
**Sent:** 2/28/2019 4:30:09 PM  
**To:** Deegan, Dave [Deegan.Dave@epa.gov]; Bender, Emily [Bender.Emily@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** FW: Paul Mercer

---

**From:** Madore, David <David.Madore@maine.gov>  
**Sent:** Thursday, February 28, 2019 11:29 AM  
**To:** Melanson, Kate <Melanson.Kate@epa.gov>  
**Subject:** RE: Paul Mercer

Just keeping you in the loop –

The press has reached out to former State Senator who chaired the joint standing committee on Environment and Natural Resources in the Maine legislature for a statement on Paul's appointment. Deb's email to EPA staff has been forwarded to me and other DEP staff several times this morning and that may be what has driven the interest here in Maine.

---

**From:** Melanson, Kate [<mailto:Melanson.Kate@epa.gov>]  
**Sent:** Thursday, February 28, 2019 8:59 AM  
**To:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Subject:** RE: Paul Mercer

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.  
Nothing has gone out from the agency, and we are hearing it may not go until Monday.

If I see if sooner, I'll send it your way. Feel free to refer any media inquiry's to us.

Thanks!  
-Kate

---

**From:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Sent:** Thursday, February 28, 2019 8:55 AM  
**To:** Melanson, Kate <[Melanson.Kate@epa.gov](mailto:Melanson.Kate@epa.gov)>  
**Subject:** RE: Paul Mercer

Thanks for checking!!

---

**From:** Melanson, Kate [<mailto:Melanson.Kate@epa.gov>]  
**Sent:** Thursday, February 28, 2019 8:54 AM  
**To:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Subject:** RE: Paul Mercer

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.  
Nothing external that I've seen. I'll check and get back to you.

Thanks!

-Kate

---

**From:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>

**Sent:** Thursday, February 28, 2019 8:51 AM

**To:** Melanson, Kate <[Melanson.Kate@epa.gov](mailto:Melanson.Kate@epa.gov)>

**Subject:** Paul Mercer

Hi Kate,

Press in Maine is starting to pick the announcement about Paul but I am unable to find the press release. Has something formal gone out yet??

Thanks!!

David R. Madore

Director of Communications, Education & Outreach/Legislative Liaison

Maine Department of Environmental Protection

(207) 287-5842 (desk)

[www.maine.gov/dep](http://www.maine.gov/dep)

Message

---

**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 2/28/2019 3:31:22 PM  
**To:** Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** FW: two items to discuss with you

---

**From:** Paul Mercer **Personal Email / Ex. 6**  
**Sent:** Thursday, February 28, 2019 10:30 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** Re: two items to discuss with you

Call anytime.

On Feb 28, 2019, at 10:22 AM, Szaro, Deb <[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)> wrote:

**Deliberative Process / Ex. 5**

Message

---

**From:** Bender, Emily [Bender.Emily@epa.gov]  
**Sent:** 2/28/2019 3:27:40 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** RE: RA Paul Mercer Welcome Bfast Remarks

I'm going to add a bit more about his background in engineering. I'll send a second draft shortly.

Sorry, got ahead of myself.

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

---

**From:** Bender, Emily  
**Sent:** Thursday, February 28, 2019 10:22 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>  
**Subject:** RA Paul Mercer Welcome Bfast Remarks

Hi Deb-

Here is a draft of Paul's remarks. I added in some anecdotes I heard you talk about at our last look out meeting. Take a look and let me know if you think this will work for him.

Thanks

Emily



Message

---

**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 2/28/2019 3:26:33 PM  
**To:** Bender, Emily [Bender.Emily@epa.gov]; Audet, Matthew [Audet.Matthew@epa.gov]  
**CC:** Lindsay, Jane [lindsay.jane@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]; Barmakian, Nancy [Barmakian.Nancy@epa.gov]  
**Subject:** RE: Announcing our new Regional Administrator - Paul Mercer

It's at bottom of my announcement

---

**From:** Bender, Emily  
**Sent:** Thursday, February 28, 2019 9:38 AM  
**To:** Audet, Matthew <Audet.Matthew@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>  
**Cc:** Lindsay, Jane <lindsay.jane@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>; Barmakian, Nancy <Barmakian.Nancy@epa.gov>  
**Subject:** RE: Announcing our new Regional Administrator - Paul Mercer

Great. What time are we planning for? 9:30-10:30?

Emily Bender  
U.S. EPA New England  
5 Post Office Sq  
Boston, MA 02109  
Mail Code 01-3

Office: 617-918-1037  
Cell: 857-366-0397

---

**From:** Audet, Matthew  
**Sent:** Thursday, February 28, 2019 8:48 AM  
**To:** Bender, Emily <Bender.Emily@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>  
**Cc:** Lindsay, Jane <lindsay.jane@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>; Barmakian, Nancy <Barmakian.Nancy@epa.gov>  
**Subject:** RE: Announcing our new Regional Administrator - Paul Mercer

We have both Leighton and Kennebec. I will work with Tom to get the VTC set up and Mike to figure out the seating.

---

**From:** Bender, Emily  
**Sent:** Thursday, February 28, 2019 8:02 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Cc:** Audet, Matthew <Audet.Matthew@epa.gov>; Lindsay, Jane <lindsay.jane@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>; Barmakian, Nancy <Barmakian.Nancy@epa.gov>  
**Subject:** Re: Announcing our new Regional Administrator - Paul Mercer

Sounds great. Jane and Matt, have you already reserved Leighton?

Sent from my iPhone

On Feb 28, 2019, at 7:55 AM, Szaro, Deb <Szaro.Deb@epa.gov> wrote:

I'd like you two to take the lead on putting together the meet and greet on Monday for Paul.

Em, please send out a calendar invite to all staff, and I'd like you to place the order at Roche Bros. I am thinking we order the same types/amounts of food that we did for the welcome back from shutdown. I will send you the order separately with my credit card info. We need to add orange juice to the order and arrange for pitchers of water here the day of. Everyone will need to bring their own coffee and please make that clear in the calendar invite.

I have spoken to Matt about picking up the paper goods.

If I missed anything, please let me know.

Thanks...Deb

---

**From:** Szaro, Deb

**Sent:** Thursday, February 28, 2019 7:47 AM

**To:** R1 ALLEPANE EPA Employees Only <[R1\\_ALLEPANEEPAONLY@epa.gov](mailto:R1_ALLEPANEEPAONLY@epa.gov)>

**Subject:** Announcing our new Regional Administrator - Paul Mercer

I'm delighted to inform you that Paul Mercer has been appointed as our Regional Administrator and will start on Monday, March 4<sup>th</sup>. <image002.jpg>

Paul is a seventh generation Mainer and lifelong outdoorsman who grew up in Bucksport, Maine. He is a graduate of Maine Maritime Academy and began his working career traveling the globe as a Marine Engineer aboard US merchant vessels. Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America. He has enjoyed successes such as achieving major reduction of emissions and life extension at the paper mill in Bucksport, Maine as a lead developer of the Bucksport Energy Project.

A member of the senior management team at Maine Maritime, Paul held positions as Associate Professor and Department Chair within the Engineering Department, and Assistant to the President for Sustainability. He also served as Director of Facilities, Vice President of Advancement and Vice President of Operations. He was instrumental in promoting innovation and environmental initiatives while at the Academy.

As Commissioner of the Department of Environmental Protection until last October, Paul combined professional experience and dedication to protecting Maine's natural resources to promote the needs of the State. Using professional and personal ethics, collaboration, open communication and common sense, he encouraged innovation and businesses to support a sustainable economy while protecting the State's valuable environment. He's long promoted the need for EPA's Office of Research and Development to align with state needs and resources, and has been a strong proponent of ORD scientists visiting states as a way to meet those needs.

Paul's personable, collaborative leadership style shined through at regional meetings of state environmental commissioners, where he has earned their respect and support. Paul is committed to furthering EPA's mission and working closely with our state partners.

Paul is a dedicated family man. He and his wife called Penobscot, Maine their home and they have two grown children and a grandchild.

Please join me for an All Hands - Meet and Greet for Paul at 10:00 am on Monday, March 4<sup>th</sup> in Leighton Hall with video to the Kennebec at the Lab.



Message

---

**From:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Sent:** 2/28/2019 3:10:02 PM  
**To:** Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** RE: Paul Mercer

I would just tell him that nothing has gone out yet thanks ng

---

**From:** Gutro, Doug  
**Sent:** Thursday, February 28, 2019 9:44 AM  
**To:** Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Subject:** Fwd: Paul Mercer

Nancy see note from Maine dep COMMs. How do you want to handle.

Sent from my iPhone

Begin forwarded message:

**From:** "Szaro, Deb" <[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)>  
**Date:** February 28, 2019 at 8:54:48 AM EST  
**To:** "Melanson, Kate" <[Melanson.Kate@epa.gov](mailto:Melanson.Kate@epa.gov)>, "Gutro, Doug" <[Gutro.Doug@epa.gov](mailto:Gutro.Doug@epa.gov)>  
**Subject:** RE: Paul Mercer

No and may not until Monday

---

**From:** Melanson, Kate  
**Sent:** Thursday, February 28, 2019 8:53 AM  
**To:** Szaro, Deb <[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)>; Gutro, Doug <[Gutro.Doug@epa.gov](mailto:Gutro.Doug@epa.gov)>  
**Subject:** FW: Paul Mercer

Did anything go out yet formally?

---

**From:** Madore, David <[David.Madore@maine.gov](mailto:David.Madore@maine.gov)>  
**Sent:** Thursday, February 28, 2019 8:51 AM  
**To:** Melanson, Kate <[Melanson.Kate@epa.gov](mailto:Melanson.Kate@epa.gov)>  
**Subject:** Paul Mercer

Hi Kate,  
Press in Maine is starting to pick the announcement about Paul but I am unable to find the press release. Has something formal gone out yet??  
Thanks!!

David R. Madore  
Director of Communications, Education & Outreach/Legislative Liaison  
Maine Department of Environmental Protection  
(207) 287-5842 (desk)  
[www.maine.gov/dep](http://www.maine.gov/dep)

Message

---

**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 2/28/2019 1:54:48 PM  
**To:** Melanson, Kate [Melanson.Kate@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** RE: Paul Mercer

No and may not until Monday.

---

**From:** Melanson, Kate  
**Sent:** Thursday, February 28, 2019 8:53 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>; Gutro, Doug <Gutro.Doug@epa.gov>  
**Subject:** FW: Paul Mercer

Did anything go out yet formally?

---

**From:** Madore, David <David.Madore@maine.gov>  
**Sent:** Thursday, February 28, 2019 8:51 AM  
**To:** Melanson, Kate <Melanson.Kate@epa.gov>  
**Subject:** Paul Mercer

Hi Kate,  
Press in Maine is starting to pick the announcement about Paul but I am unable to find the press release. Has something formal gone out yet??  
Thanks!!

David R. Madore  
Director of Communications, Education & Outreach/Legislative Liaison  
Maine Department of Environmental Protection  
(207) 287-5842 (desk)  
[www.maine.gov/dep](http://www.maine.gov/dep)

Message

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**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 2/25/2019 1:05:27 PM  
**To:** Lindsay, Jane [lindsay.jane@epa.gov]; Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** FW: New Region 1 RA

---

**From:** Fugh, Justina  
**Sent:** Friday, February 22, 2019 10:49 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Cc:** Dierker, Carl <Dierker.Carl@epa.gov>; Jensen, LeAnn <Jensen.Leann@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>  
**Subject:** RE: New Region 1 RA

Hi Deb,

## Deliberative Process / Ex. 5

**Deliberative Process / Ex. 5** In addition, please know that he will need to have an ethics briefing with OGC/Ethics and your regional ethics team, preferably in his first few days, and will need to sign the Trump Ethics Pledge. In addition, Mr. Mercer will need to complete the dreaded 278 and until he does, I won't have any sense for his financial conflicts.

Shannon Griffo of OGC/Ethics

## Deliberative Process / Ex. 5

# Deliberative Process / Ex. 5

Hope that helps,  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----

**From:** Szaro, Deb  
**Sent:** Friday, February 22, 2019 10:17 AM

To: Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

Subject: New Region 1 RA

Hi Justina,

# Deliberative Process / Ex. 5

Thanks for your help!

Deb

Sent from my iPhone

Message

---

**From:** Conroy, Kristen [Conroy.Kristen@epa.gov]  
**Sent:** 3/5/2019 1:19:15 PM  
**To:** R1 OPA [R1\_OPA@epa.gov]; Szaro, Deb [Szaro.Deb@epa.gov]  
**Subject:** Inside Source - Mercer

## Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure

March 04, 2019

### ***Update Appended***

Former Maine environment chief Paul Mercer has declined the role of EPA Region 1 administrator on the day he was due to start the position, following environmentalists' criticism that his work under the state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

On the morning of March 4, when Mercer was scheduled to join the agency, Acting Region 1 Administrator Deb Szaro told staff that Mercer had declined the job, according to two people familiar with the announcement. The sources said they did not know the reason for Mercer's decision.

An EPA spokesman called Mercer's withdrawal "a matter of personal privacy" and declined to offer further details.

The reversal comes after Szaro announced [Mercer's appointment](#) to lead Region 1 in a Feb. 28 email that highlighted Mercer's work for private engineering firms and said he would support aligning EPA's Office of Research and Development research with state needs and resources.

"Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America," the email says, adding that his past successes include reducing emissions from a Bucksport, Maine paper mill, while also extending the life of the mill.

Environmentalists expressed skepticism about Mercer's appointment, citing his leadership of the Maine Department of Environmental Protection (MDEP) during the tenure of former conservative Gov. Paul LePage (R), who advocates say failed to adequately enforce environmental laws.

[LePage officials also sparred](#) with the Obama EPA over water quality standards. In the fall of 2015, prior to Mercer's appointment as commissioner, MDEP sued EPA over the agency's disapproval of the state's updated water quality standards, claiming EPA "unlawfully usurps" the state's role, a position supported by industry groups.

Kyla Bennett, director of science policy for the Public Employees for Environmental Responsibility (PEER) told *Inside EPA* March 1 in response to news of Mercer's appointment to lead EPA that "The whole LePage administration, their whole M.O. was not to enforce environmental laws.

"I'm suspicious of anybody that the Trump administration appoints, and I'm doubly suspicious of anybody that comes out of the LePage administration," she added.

Still, some environmentalists in the region said Mercer would have been better than other potential Region 1 candidates, suggesting his work at MDEP would encourage him to focus on strict environmental protection.

"Given who our president is right now, and the harsh anti-environmental record that they've been pursuing, I think Paul Mercer comes in with a strong appreciation generally for the importance of a clean environment, clean air, clean water, the role of EPA," Pete Didisheim, advocacy director for the Natural Resources Council of Maine, told the Boston radio station WGBH news.

"And I would hope that he would stand up for [those] values in that mission on behalf of the New England states."

Mercer would have replaced former Region 1 Administrator Alexandra Dunn, who was recently sworn in as EPA's new toxics chief.

Any new Region 1 administrator will have to address ongoing attrition of the region's workforce, which some agency employees have suggested is related to the implementation of President Donald Trump's deregulatory agenda.

Last month, current and former Region 1 staff told WGBH news that the region is shrinking from attrition as retiring staff have not been replaced, and that remaining workers are increasingly frustrated with growing workloads.



"I don't think it's any secret to say that we feel like certainly we're in the crosshairs," Margherita Pryor, who has worked for EPA for nearly 40 years, told the station.

In response to the concerns over attrition, the EPA spokesman said that the agency is seeking to address declining staff numbers in the region, adding that jobs have opened because of an atypical spike in how many workers are reaching retirement age.

"We have a higher than usual number of employees that were eligible to retire in the last few years, and some folks have stayed on past their retirement eligible time," the spokesman says. The spokesman said the decreasing numbers are not due to a morale problem in the region.

"When it comes to back-filling these employees," the spokesman said, the agency is "trying to fill as many positions as we can," but that hiring federal workers is a lengthy process. "We're trying to get to a level that Congress authorized, and that we are comfortable with to do the job." --

*Dave Reynolds* ([dreynolds@iwpnews.com](mailto:dreynolds@iwpnews.com))

Message

---

**From:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Sent:** 3/4/2019 7:45:54 PM  
**To:** Craig LeMoult [craig\_lemoult@wgbh.org]  
**Subject:** Re. Paul Mercer

Hi Craig,

EPA's HQ office is handling calls on Mr. Mercer. Please reach out to [press@epa.gov](mailto:press@epa.gov) and someone there will be able to get you a statement or something.

Sorry I can't be more helpful on this!

Best Regards,  
Dave

~~~~~

Dave Deegan

U.S. EPA, New England Regional Office

Office of Public Affairs

Media Relations | Social Media | Web Content

phone: 617.918.1017 | mobile: 617.594.7068

email: [deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)



Message

---

**From:** Deegan, Dave [Deegan.Dave@epa.gov]  
**Sent:** 3/4/2019 2:31:01 PM  
**To:** Abboud, Michael [abboud.michael@epa.gov]; Press [Press@epa.gov]  
**CC:** Gutro, Doug [Gutro.Doug@epa.gov]; Bender, Emily [Bender.Emily@epa.gov]; Senn, John [Senn.John@epa.gov]  
**Subject:** RE: FW INQUIRY : Paul Mercer to be EPA Region 1 Administrator

Thanks Michael, will do.

Best Regards,  
Dave

~~~~~

Dave Deegan  
U.S. EPA, New England Regional Office  
Office of Public Affairs  
Media Relations | Social Media | Web Content  
phone: 617.918.1017 | mobile: 617.594.7068  
email: [deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)



---

**From:** Abboud, Michael  
**Sent:** Monday, March 04, 2019 9:20 AM  
**To:** Deegan, Dave <Deegan.Dave@epa.gov>; Press <Press@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>  
**Cc:** Gutro, Doug <Gutro.Doug@epa.gov>; Bender, Emily <Bender.Emily@epa.gov>; Senn, John <Senn.John@epa.gov>  
**Subject:** RE: FW INQUIRY : Paul Mercer to be EPA Region 1 Administrator

We've handled it. Just hold for now, and pass any inquiries to HQ that you get.

---

**From:** Deegan, Dave  
**Sent:** Monday, March 4, 2019 9:17 AM  
**To:** Press <[Press@epa.gov](mailto:Press@epa.gov)>; Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Cc:** Gutro, Doug <[Gutro.Doug@epa.gov](mailto:Gutro.Doug@epa.gov)>; Bender, Emily <[Bender.Emily@epa.gov](mailto:Bender.Emily@epa.gov)>; Senn, John <[Senn.John@epa.gov](mailto:Senn.John@epa.gov)>  
**Subject:** FW INQUIRY : Paul Mercer to be EPA Region 1 Administrator

Appears we have missed the deadline but passing this along to HQ for follow up or simply awareness, as you see fit.

Also, if you are able to let us know if/when an announcement will be made about Mr. Mercer starting as RA, and if all inquiries should continue to go down to HQ.

Thanks and Best Regards,  
Dave

~~~~~

Dave Deegan  
U.S. EPA, New England Regional Office  
Office of Public Affairs  
Media Relations | Social Media | Web Content  
phone: 617.918.1017 | mobile: 617.594.7068  
email: [deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)



---

**From:** Kevin Bogardus <[kbogardus@eenews.net](mailto:kbogardus@eenews.net)>

**Sent:** Saturday, March 02, 2019 6:47 PM

**To:** Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>; Hewitt, James <[hewitt.james@epa.gov](mailto:hewitt.james@epa.gov)>; Block, Molly <[block.molly@epa.gov](mailto:block.molly@epa.gov)>; Deegan, Dave <[Deegan.Dave@epa.gov](mailto:Deegan.Dave@epa.gov)>; Press <[Press@epa.gov](mailto:Press@epa.gov)>

**Subject:** Paul Mercer to be EPA Region 1 Administrator

Hey everyone,

It's Kevin Bogardus with E&E News. My apologies for the weekend email.

I'm working on a story about Paul Mercer, former commissioner of the Maine Department of Environmental Protection, being appointed as EPA Region 1 Administrator who will start on Monday, March 4, according to a Feb. 28 email sent to EPA Region 1 staff that I have obtained. I had a question about this, which is:

-- Does Administrator Wheeler have a statement on Mercer's appointment as EPA Region 1 Administrator?

Please get back to me as soon as possible. My deadline is 10 pm EST Sunday, March 3, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at 202-247-7844. Thank you for your help.

**Kevin Bogardus**

E&E News Reporter

[kbogardus@eenews.net](mailto:kbogardus@eenews.net)

202-446-0401 (p)

202-247-7844 (c)

202-737-5299 (f)

Follow me [@KevinBogardus](https://twitter.com/KevinBogardus)

---

**E&E News**

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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

Message

---

**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 3/3/2019 7:11:17 PM  
**To:** Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** Fwd:

Sent from my iPhone

Begin forwarded message:

**From:** "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Date:** March 3, 2019 at 11:08:32 AM EST  
**To:** "kbogardus@eenews.net" <kbogardus@eenews.net>  
**Cc:** "Konkus, John" <konkus.john@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Szaro, Deb" <Szaro.Deb@epa.gov>

**Personal Matters / Ex. 6**

Ryan Jackson  
Chief of Staff  
U.S. EPA

Personal Matters / Ex. 6

Message

---

**From:** Daniel Moon [DMoon@ebcne.org]  
**Sent:** 3/7/2019 6:18:02 PM  
**To:** Gutro, Doug [Gutro.Doug@epa.gov]  
**Subject:** RE: Region 1 Administrator Quits Before He Starts

NUMBER ???

---

Daniel K. Moon, President and Executive Director  
Environmental Business Council of New England  
617-262-4050 | cell 617-970-4100 [dmoon@ebcne.org](mailto:dmoon@ebcne.org) |

---

**From:** Gutro, Doug <Gutro.Doug@epa.gov>  
**Sent:** Thursday, March 7, 2019 12:01 PM  
**To:** Daniel Moon <DMoon@ebcne.org>  
**Subject:** RE: Region 1 Administrator Quits Before He Starts

You can call me

---

**From:** Daniel Moon <[DMoon@ebcne.org](mailto:DMoon@ebcne.org)>  
**Sent:** Wednesday, March 06, 2019 11:52 AM  
**To:** Gutro, Doug <[Gutro.Doug@epa.gov](mailto:Gutro.Doug@epa.gov)>  
**Subject:** Fwd: Region 1 Administrator Quits Before He Starts

Doug  
Any insight??  
Dan

iPhone

Begin forwarded message:

**From:** "Young, David F." <[YoungDF@cdmsmith.com](mailto:YoungDF@cdmsmith.com)>  
**Date:** March 6, 2019 at 8:15:43 AM EST  
**To:** "[dmoon@ebcne.org](mailto:dmoon@ebcne.org)" <[dmoon@ebcne.org](mailto:dmoon@ebcne.org)>  
**Subject:** FW: Region 1 Administrator Quits Before He Starts

---

Hi Dan,  
Any further insight into why he declined the position?  
Dave

---

## Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure March 04, 2019

Former Maine environment chief Paul Mercer has declined the role of EPA Region 1 administrator on the day he was due to start the position, following environmentalists' criticism that his work under the

state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

On the morning of March 4, when Mercer was scheduled to join the agency, Acting Region 1 Administrator Deb Szaro told staff that Mercer had declined the job, according to two people familiar with the announcement.

The sources said they did not know the reason for Mercer's decision.

But the reversal comes after Szaro announced Mercer's appointment to lead Region 1 in a Feb. 28 email that highlighted Mercer's work for private engineering firms and said he would support aligning EPA's Office of Research and Development research with state needs and resources.

"Paul has combined his experience as a Principal of engineering firms in Maine with expertise in renewables, solid fuels and biomass energy systems to benefit businesses throughout North America," the email says, adding that his past successes include reducing emissions from a Bucksport, Maine paper mill, while also extending the life of the mill.

Environmentalists expressed skepticism about Mercer's appointment, citing his leadership of the Maine Department of Environmental Protection (MDEP) during the tenure of former conservative Gov. Paul LePage (R), who advocates say failed to adequately enforce environmental laws.

LePage officials also sparred with the Obama EPA over water quality standards. In the fall of 2015, prior to Mercer's appointment as commissioner, MDEP sued EPA over the agency's disapproval of the state's updated water quality standards, claiming EPA "unlawfully usurps" the state's role, a position supported by industry groups.

Kyla Bennett, director of science policy for the Public Employees for Environmental Responsibility (PEER) told Inside EPA March 1 in response to news of Mercer's appointment to lead EPA that "The whole LePage administration, their whole M.O. was not to enforce environmental laws.

"I'm suspicious of anybody that the Trump administration appoints, and I'm doubly suspicious of anybody that comes out of the LePage administration," she added.

Still, some environmentalists in the region said Mercer would have been better than other potential Region 1 candidates, suggesting his work at MDEP would encourage him to focus on strict environmental protection.

"Given who our president is right now, and the harsh anti-environmental record that they've been pursuing, I think Paul Mercer comes in with a strong appreciation generally for the importance of a clean environment, clean air, clean water, the role of EPA," Pete Didisheim, advocacy director for the Natural Resources Council of Maine, told the Boston radio station WGBH news.

"And I would hope that he would stand up for [those] values in that mission on behalf of the New England states."

Mercer would have replaced former Region 1 Administrator Alexandra Dunn, who was recently sworn in as EPA's new toxics chief.

Any new Region 1 administrator will have to address ongoing attrition of the region's workforce, which some agency employees have suggested is related to the implementation of President Donald Trump's deregulatory agenda.

Last month, current and former Region 1 staff told WGBH news that the region is shrinking from attrition as retiring staff have not been replaced, and that remaining workers are increasingly frustrated with growing workloads.

"I don't think it's any secret to say that we feel like certainly we're in the crosshairs," Margherita Pryor, who has worked for EPA for nearly 40 years, told the station. -- Dave Reynolds  
([dreynolds@iwpnews.com](mailto:dreynolds@iwpnews.com))



Message

---

**From:** Gutro, Doug [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9E540AA74014778B84C89FE816D9DBF-GUTRO, DOUG]  
**Sent:** 2/28/2019 5:36:18 PM  
**To:** Paul Mercer **Personal Email / Ex. 6**  
**Subject:** Fwd: FOR REVIEW// EPA Announces Appointment of Paul Mercer to Region 1 Administrator

Hi Paul:

We are super excited to have you come on board.

TRI

Here is the New England fact sheet on TRI data generated by HQ. You can drill down by the top facilities and see the chemicals.

<https://iaspub.epa.gov/triexplorer/region.html?pYear=2017&pLoc=1&pParent=TRI&pDataSet=TRIQ1>

YOUR ANNOUNCEMENT

No word from EPA HQ on the timing. Once we get the final press release from them and get the green light, we will send out to all regional press. The team is completely on board with your thoughts about the first sixty days.

Doug Gutro  
Director of Public Affairs  
US EPA  
5 Post Office Square Suite 100  
Boston MA 02109  
(617) 918-1021  
Fax (617) 918-0021

---

**From:** Paul Mercer **Personal Email / Ex. 6**  
**Sent:** Thursday, February 28, 2019 11:11 AM  
**To:** Gutro, Doug <Gutro.Doug@epa.gov>  
**Subject:** [SPAM-Sender] Fwd: FOR REVIEW// EPA Announces Appointment of Paul Mercer to Region 1 Administrator

Begin forwarded message:

**From:** "Hewitt, James" <hewitt.james@epa.gov>  
**Date:** February 28, 2019 at 9:25:57 AM EST  
**To:** **Personal Email / Ex. 6**  
**Subject:** FOR REVIEW// EPA Announces Appointment of Paul Mercer to Region 1 Administrator

**Deliberative Process / Ex. 5**

# Deliberative Process / Ex. 5

Mr. Mercer most recently served as Commissioner of the Maine Department of Environmental Protection (MeDEP) under former Governor Paul LePage where he worked collaboratively with constituents to promote the needs of the state's environmental issues and its economy. Prior to joining the governor's cabinet, Paul held the position of professor and administrator at the Maine Maritime Academy where he introduced courses and programs incorporating environmental engineering and ethics. While working as a professor, he presented to the Air Bureau of MeDEP designed to provide compliance inspectors a better understanding of combustion and its relationship to air emissions.

Additionally, Mr. Mercer currently serves as a board member of the Environmental Research Institute of the States that has allowed him to interreact with EPA's Office of Research and Development (ORD) and promote the need for ORD research to align with State's needs.

"As Maine's DEP Commissioner, Paul Mercer played a leading role in protecting the state's unique array of natural resources, which are an integral part of its economy," said **EPA Acting Administrator Andrew Wheeler**. "His wealth of experience and ability to work closely with the regulated community and concerned citizens demonstrate that he will provide outstanding leadership for Region 1."

## Quotes of Support

"Much of Paul's experience has been in the states within Region 1. He has the leadership roles in a variety of energy and environmental projects, including biofuels, waste-to-energy, BACT applications with combustion emissions, natural gas, and landfill gas," said **U.S. Senator Susan Collins**. "As Commissioner of the Maine DEP, Paul was well-respected by the regulated community in the state...I am pleased to recommend Paul for the Region 1 Administrator position."

"Mercer has worked collaboratively with business and environmental advocates, as well as state and federal agencies, to move our state's economy forward while ensuring our environment is protected," said **Governor Paul LePage**. "His innovative leadership and balanced approach has helped business to grow and prosper while still taking care to preserve our natural resources."

"The partnership between EPA and state environmental agencies is incredibly important," said **Vermont Department of Environment Quality Secretary Julie Moore**. "Throughout his tenure at Maine DEP Paul built strong relationships with the other New England environmental agencies that will allow him to jump in to this role immediately and effectively. I look forward to the opportunity to continue to work with Paul in his new capacity."

"I am pleased to hear of Paul Mercer's appointment as the EPA Region 1 administrator," said **Bucksport Town Manager Susan Lessard**. "I had the pleasure of working with Paul as a member of the Maine Board of Environmental Protection when he served as the Commissioner of Environmental Protection in Maine. I found him to be a critical thinker, a person with both feet on the ground, a forward-thinking problem solver, and a person committed to finding a way for there to be winners and winners - instead of winners and losers."

James Hewitt  
Environmental Protection Agency  
Press Secretary  
(202) 578-6141



Message

---

**From:** Gutro, Doug [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9E540AA74014778B84C89FE816D9DBF-GUTRO, DOUG]  
**Sent:** 2/25/2019 3:46:26 PM  
**To:** Melanson, Kate [Melanson.Kate@epa.gov]  
**CC:** Norcross, Jeffrey [Norcross.Jeffrey@epa.gov]  
**Subject:** State One Pagors

Kate –

# Deliberative Process / Ex. 5

Doug Gutro  
Director of Public Affairs  
US EPA  
5 Post Office Square Suite 100  
Boston MA 02109  
(617) 918-1021  
Fax (617) 918-0021

Message

---

**From:** Protzmann, Chuck [Protzmann.Chuck@epa.gov]  
**Sent:** 2/27/2019 8:33:27 PM  
**To:** Johnson, Arthur [Johnson.Arthur@epa.gov]; Weeks, Frederick [Weeks.Fred@epa.gov]; Shanahan, Katherine [Shanahan.Katherine@epa.gov]  
**CC:** Ottariano, Michael [Ottariano.Michael@epa.gov]; Sheldon, Ken [Sheldon.Ken@epa.gov]; Mecozzi, Grant [Mecozzi.Grant@epa.gov]; Cunningham, Raymond [cunningham.raymond@epa.gov]  
**Subject:** New RA

All,

I have talked with Paul Mercer on enrolling in USAccess on his first day, Monday. He called. I talked to Deb, Matt and Jane and he has an opening at 9am where he could do it. I have informed him of what the process is for enrolling and card activation. He knows to bring 2 valid forms of ID on Monday. Deb said that this may not have happened as there is a part of the process that has occurred out of order. He has Administrative time built in later in the week so we could do it another day, as long as we coordinate with Jane.

V/R  
Chuck

Message

---

**From:** Protzmann, Chuck [Protzmann.Chuck@epa.gov]  
**Sent:** 2/26/2019 7:16:33 PM  
**To:** Johnson, Arthur [Johnson.Arthur@epa.gov]; Ottariano, Michael [Ottariano.Michael@epa.gov]; Shanahan, Katherine [Shanahan.Katherine@epa.gov]  
**Subject:** FW: Prompt Action Needed by Paul Mercer for Required Background Investigation

# Deliberative Process / Ex. 5

**From:** personnel\_security@epa.gov <personnel\_security@epa.gov>

**Sent:** Tuesday, February 26, 2019 1:53 PM

**To:** **Personal Email / Ex. 6**

**Cc:** Sheldon, Ken <Sheldon.Ken@epa.gov>; McAfee, Shirley <McAfee.Shirley@epa.gov>; Protzmann, Chuck <Protzmann.Chuck@epa.gov>; Protzmann, Chuck <Protzmann.Chuck@epa.gov>; Protzmann, Chuck <Protzmann.Chuck@epa.gov>; McDermott, Sean <Mcdermott.Sean@epa.gov>; Gilliam, Bernie <Gilliam.Bernie@epa.gov>

**Subject:** Prompt Action Needed by Paul Mercer for Required Background Investigation

Dear Paul Mercer:

Congratulations on your pending appointment to a position at the Environmental Protection Agency (EPA). This important email outlines the security requirements you must meet before you come on board. The position you are being considered for has been designated as High Risk. The Personnel Security Branch (PSB) also has been notified that the position requires access to classified national security information (NSI).

To fulfill the requirements for this position, you must undergo a background investigation. Please submit the documents described below within **three (3) calendar days** from the date you receive this email. You will not be allowed to begin work until all security requirements have been met; this includes having all documents reviewed and accepted by PSB. In addition, **the offer for this position may be rescinded if initial security requirements are not met within the stipulated timeframe.**

**Step 1:** Please read these instructions carefully—**before** clicking any links or completing any forms. It's important that you complete the process as directed in this email.

**Step 2:** You may soon receive an email from OPM about the 14-character registration code/personal identification number (PIN) that you'll need to register for the SF 86 Questionnaire for National Security Positions using the Office of Personnel Management's (OPM's) online tool: Electronic Questionnaires for Investigations Processing (e-QIP). If you do not receive the email or if the message does not include the PIN, please call PSB at (202) 564-7912 and we'll provide the PIN.

If the email from OPM does include the 14-character PIN, follow all instructions and make sure your e-QIP form is complete. Missing or incomplete responses may result in your e-QIP form being rejected. Please refer to "Filling Out Your Security Forms" and "Important Instructions for Completing Security Forms" for details about completing your materials correctly.

- a. Access the e-QIP Gateway at <https://nbib.opm.gov/e-qip-background-investigations/>.
- b. Click the **Enter e-QIP Applicant Site** button. (Follow the instructions to adjust your Web browser settings and allow e-QIP to run.)
- c. Click **Continue** at the browser check page.
- d. At the Applicant Registration screen, click **Register for Username and Password**.
- e. Type your **Social Security Number** where indicated. Click **Submit**. (Note: If you do not have a Social Security Number, please call 202-564-7912 to receive a "Request Number.")
- f. Continue stepping through e-QIP instructions to answer **Golden/Challenge Questions**, enter your PIN in the "Registration Code" field, and create a **Username** and **Password**. Be sure to remember your responses for future reference.
- g. Click **Enter Your Data** to complete and save your questionnaire.

**Step 3:** Digitally sign the following sections of the SF 86 (please consult the step-by-step instructions provided in the "Digitally Sign Your SF 86" document):

- Authorization for Release of Information
- Certification That My Answers Are True
- Authorization for Release of Medical Information (required only if you answer "yes" to question 21 on e-QIP form)
- Fair Credit Reporting Disclosure and Authorization

If you are unable to digitally sign these pages, refer to the "Scan and Upload, Fax, or Mail Documents" section of "Important Instructions for Completing Security Forms."

In addition, you are required to submit the following:

- OF 306: Declaration for Federal Employment (Please refer to Important Instructions for Completing Security Forms for specific instructions.)

**Step 4:** In e-QIP, be sure to release your investigation to the EPA by clicking the **"Release Request/Transmit to Agency"** button.

Your prompt attention is necessary and appreciated. If you have questions, please call (202) 564-7912 or send an email to [Personnel\\_Security@epa.gov](mailto:Personnel_Security@epa.gov).

Sincerely,

The EPA Personnel Security Branch



Message

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**From:** Weeks, Frederick [Weeks.Fred@epa.gov]  
**Sent:** 3/4/2019 6:58:26 PM  
**To:** Johnson, Arthur [Johnson.Arthur@epa.gov]  
**Subject:** RE: Stopping Background Check for Paul Mercer

## Deliberative Process / Ex. 5

Fred

---

**From:** Shanahan, Katherine  
**Sent:** Monday, March 04, 2019 1:55 PM  
**To:** O'Brien, Patricia <Obrien.Pat@epa.gov>; Protzmann, Chuck <Protzmann.Chuck@epa.gov>  
**Cc:** Grazick, Jason <Grazick.Jason@epa.gov>; McAfee, Shirley <McAfee.Shirley@epa.gov>; Weeks, Frederick <Weeks.Fred@epa.gov>  
**Subject:** RE: Stopping Background Check for Paul Mercer

## Deliberative Process / Ex. 5

**From:** O'Brien, Patricia  
**Sent:** Monday, March 04, 2019 12:27 PM  
**To:** Protzmann, Chuck <Protzmann.Chuck@epa.gov>; Shanahan, Katherine <Shanahan.Katherine@epa.gov>  
**Cc:** Grazick, Jason <Grazick.Jason@epa.gov>; McAfee, Shirley <McAfee.Shirley@epa.gov>; Weeks, Frederick <Weeks.Fred@epa.gov>  
**Subject:** Stopping Background Check for Paul Mercer

Hello,

## Deliberative Process / Ex. 5

Thanks!

- Pat

Message

---

**From:** Weeks, Frederick [Weeks.Fred@epa.gov]  
**Sent:** 3/4/2019 6:57:15 PM  
**To:** Johnson, Arthur [Johnson.Arthur@epa.gov]  
**Subject:** FW: **Deliberative Process / Ex. 5**

**Deliberative Process / Ex. 5**

Fred

---

**From:** Shanahan, Katherine  
**Sent:** Monday, March 04, 2019 1:45 PM  
**To:** O'Brien, Patricia <Obrien.Pat@epa.gov>; Protzmann, Chuck <Protzmann.Chuck@epa.gov>  
**Cc:** Grazick, Jason <Grazick.Jason@epa.gov>; McAfee, Shirley <McAfee.Shirley@epa.gov>; Weeks, Frederick <Weeks.Fred@epa.gov>  
**Subject:** RE: Stopping Background Check for Paul Mercer

**Deliberative Process / Ex. 5**

**From:** O'Brien, Patricia  
**Sent:** Monday, March 04, 2019 12:27 PM  
**To:** Protzmann, Chuck <Protzmann.Chuck@epa.gov>; Shanahan, Katherine <Shanahan.Katherine@epa.gov>  
**Cc:** Grazick, Jason <Grazick.Jason@epa.gov>; McAfee, Shirley <McAfee.Shirley@epa.gov>; Weeks, Frederick <Weeks.Fred@epa.gov>  
**Subject:** Stopping Background Check for Paul Mercer

Hello,

**Deliberative Process / Ex. 5**

Thanks!  
- Pat

Message

---

**From:** Ottariano, Michael [Ottariano.Michael@epa.gov]  
**Sent:** 3/3/2019 5:34:40 PM  
**To:** Johnson, Arthur [Johnson.Arthur@epa.gov]; Weeks, Frederick [Weeks.Fred@epa.gov]; Szaro, Deb [Szaro.Deb@epa.gov]  
**Subject:** Fwd: Access Exemption for new USEPA Regional Administrator Paul Mercer

## Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

**From:** "Gonyer, Christopher E" <Christopher.E.Gonyer@ice.dhs.gov>  
**Date:** March 3, 2019 at 11:46:09 AM EST  
**To:** "Ottariano, Michael" <Ottariano.Michael@epa.gov>, "Wisnewski, Jason W" <Jason.W.Wisnewski@ice.dhs.gov>, "Pinardi, Matthew W" <Matthew.W.Pinardi@ice.dhs.gov>  
**Cc:** "Protzmann, Chuck" <Protzmann.Chuck@epa.gov>, "Sheldon, Ken" <Sheldon.Ken@epa.gov>  
**Subject:** RE: Access Exemption for new USEPA Regional Administrator Paul Mercer

No issues. We'll coordinate with Paragon on Monday morning.

Respectfully,

Christopher Gonyer  
Area Commander  
Federal Protective Service  
Region-I  
U.S. Department of Homeland Security  
(617) 565-4704 - Office  
(617) 828-5795 - cell  
[Christopher.e.gonyer@hq.dhs.gov](mailto:Christopher.e.gonyer@hq.dhs.gov)

---

**From:** Ottariano, Michael <Ottariano.Michael@epa.gov>  
**Date:** Friday, Mar 01, 2019, 2:20 PM  
**To:** Wisnewski, Jason W <Jason.W.Wisnewski@ice.dhs.gov>, Gonyer, Christopher E <Christopher.E.Gonyer@ice.dhs.gov>, Pinardi, Matthew W <Matthew.W.Pinardi@ice.dhs.gov>  
**Cc:** Protzmann, Chuck <Protzmann.Chuck@epa.gov>, Sheldon, Ken <Sheldon.Ken@epa.gov>  
**Subject:** RE: Access Exemption for new USEPA Regional Administrator Paul Mercer

I just want to confirm receipt and reach out to see if you have any issues with the request below.

Thanks again,

Mike Ottariano  
USEPA Region 1 – New England  
5 Post Office Square  
Boston, MA 02109-3912  
(617) 918-1190

---

**From:** Ottariano, Michael

**Sent:** Thursday, February 28, 2019 4:52 PM

**To:** 'Jason.W.Wisnewski@ice.dhs.gov' <Jason.W.Wisnewski@ice.dhs.gov>;

'christopher.e.gonyer@ice.dhs.gov' <christopher.e.gonyer@ice.dhs.gov>;

'matthew.w.pinardi@ice.dhs.gov' <matthew.w.pinardi@ice.dhs.gov>

**Cc:** Protzmann, Chuck <Protzmann.Chuck@epa.gov>; Arthur Johnson <Johnson.Arthur@epa.gov>; Fred

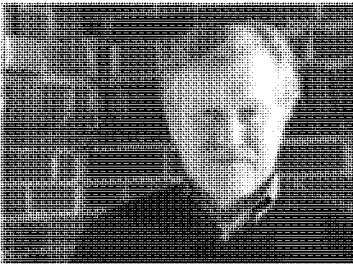
Weeks <Weeks.Fred@epa.gov>; Sheldon, Ken <Sheldon.Ken@epa.gov>; 'cmoore@parasys.com'

<cmoore@parasys.com>; 'mlamacchia@parasys.com' <mlamacchia@parasys.com>

**Subject:** Access Exemption for new USEPA Regional Administrator Paul Mercer

All,

Paul Mercer, EPA New England's new Regional Administrator will begin working in the Region on Monday, March 4, 2019. We will be getting the badging process going hopefully on Monday morning; however, it will most likely take 5-7 business days before he is issued a USAccess badge. In the meantime, we are requesting Mr. Mercer be allowed pass through the security of the McCormack building without going through the normal visitor screening until that badge is issued. EPA accepts full risk of this request. On Monday, he will likely be escorted by an EPA employee. Please let me know if you need any more information. A picture is copied here for reference.



Thank you,

Mike Ottariano

Chief, Customer Service and Facilities Unit

U.S. Environmental Protection Agency Region 1

5 Post Office Square

Boston, MA 02109-3912

(617) 918-1190

Message

---

**From:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Sent:** 3/1/2019 6:47:08 PM  
**To:** Shanahan, Katherine [Shanahan.Katherine@epa.gov]  
**CC:** Johnson, Arthur [Johnson.Arthur@epa.gov]  
**Subject:** Re: Appointment letter for EPA position

Thanks much

Sent from my iPhone

On Mar 1, 2019, at 1:46 PM, Shanahan, Katherine <[Shanahan.Katherine@epa.gov](mailto:Shanahan.Katherine@epa.gov)> wrote:

All is silent as far as I am concerned. I will simply tell Peggy that the Day 1 schedule will be shifting and we do not need to be downstairs in the morning.

I am sorry Deb. I know this leaves a lot on you

K

---

**From:** Szaro, Deb  
**Sent:** Friday, March 01, 2019 1:17 PM  
**To:** Shanahan, Katherine <[Shanahan.Katherine@epa.gov](mailto:Shanahan.Katherine@epa.gov)>  
**Cc:** Johnson, Arthur <[Johnson.Arthur@epa.gov](mailto:Johnson.Arthur@epa.gov)>  
**Subject:** Re: Appointment letter for EPA position

Thanks Kathie.

I found out this morning from Paul and did not want the word to spread. I was waiting to hear that Paul had connected directly with Ryan which happened within the last hour.

I plan to announce at the all hands on Monday. I'm not putting an all hands message out and do not plan to let the ODs know until Monday morning.

Obviously, you won't need to come down first thing Monday for on boarding.

Sent from my iPhone

On Mar 1, 2019, at 12:51 PM, Shanahan, Katherine <[Shanahan.Katherine@epa.gov](mailto:Shanahan.Katherine@epa.gov)> wrote:

Deb/ Art

See below

---

**From:** Jackson, Ryan  
**Sent:** Friday, March 01, 2019 12:48 PM  
**To:** Carr, Dorothy <[Carr.Dorothy@epa.gov](mailto:Carr.Dorothy@epa.gov)>  
**Cc:** Carr, Dorothy <[Carr.Dorothy@epa.gov](mailto:Carr.Dorothy@epa.gov)>; Shanahan, Katherine <[Shanahan.Katherine@epa.gov](mailto:Shanahan.Katherine@epa.gov)>  
**Subject:** Re: Appointment letter for EPA position

Mr Mercer has decided not to join EPA.

Ryan Jackson  
Chief of Staff  
U.S. EPA

**Direct Line / Ex. 6**

On Mar 1, 2019, at 10:21 AM, Paul Mercer <**Personal Email / Ex. 6**> wrote:

**Personal Matters / Ex. 6**

Respectfully,  
Paul Mercer

On Mar 1, 2019, at 10:03 AM, Carr, Dorothy <[Carr.Dorothy@epa.gov](mailto:Carr.Dorothy@epa.gov)> wrote:

Good morning Paul,

**Personal Matters / Ex. 6**

Take care,  
Dorothy Carr  
Lead Human Resources Specialist, Executive Resources  
Human Resources Management Division, OARM-RTP  
U.S. Environmental Protection Agency  
Research Triangle Park, NC  
(919) 541-4356 (office)  
(252) 301-4784 (cell)  
<image003.jpg>

CONFIDENTIALITY: This communication may contain privileged or other confidential information. If you are not the intended addressee, or believe you have received this communication in error, you may neither copy, disseminate, nor distribute it to anyone else or use it in any unauthorized manner; to do so is strictly prohibited and may be unlawful. If you receive this email by mistake, please advise the sender immediately by using the reply facility in your mail software and delete it from your computer. "Information in this

message may be subject to the Privacy Act (5 USC 552a) and should be treated accordingly."

<Appointment Ltr - PMercer.pdf>

Message

---

**From:** Szaro.Deb@epa.gov [Szaro.Deb@epa.gov]  
**Sent:** 3/1/2019 12:20:14 PM  
**To:** Paul Mercer <[REDACTED]>  
**Subject:** Re: Paul Mercer

I got it

Sent from my iPhone

On Mar 1, 2019, at 7:10 AM, Paul Mercer <[REDACTED]> wrote:

Begin forwarded message:

**From:** Paul Mercer <[REDACTED]>  
**Date:** February 28, 2019 at 9:50:33 PM EST  
**To:** Ryan Jackson <jackson.ryan@epa.gov>  
**Subject:** Paul Mercer

Mr. Jackson,

It is with deep regret that I ask that you remove my name from consideration for the Region 1 Administrator.

I apologize for going this deep into the process but I have realized the commitment required to properly do the job will place a burden on my family and myself that I am not comfortable taking on.

Again I regret the inconvenience and problems my decision may cause but I believe Deb and Staff will continue their great work until an Administrator is hired.

Regards,  
Paul Mercer



Message

---

**Sent:** 2/25/2019 1:04:54 PM  
**To:** |  
**Subject:** FW: New Region 1 RA

---

**From:** Fugh, Justina  
**Sent:** Friday, February 22, 2019 10:49 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Cc:** Dierker, Carl <Dierker.Carl@epa.gov>; Jensen, LeAnn <Jensen.Leann@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>  
**Subject:** RE: New Region 1 RA

Hi Deb,

# Deliberative Process / Ex. 5

Hope that helps,  
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----

**From:** Szaro, Deb  
**Sent:** Friday, February 22, 2019 10:17 AM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** New Region 1 RA

Hi Justina,

My understanding is that Paul Mercer will be starting on March 4th. I am setting up his calendar of orientation meetings and hot issues briefings for his first month. Given that he was the Commissioner of ME DEP, I need to know if he will be recused from everything that touches ME or just things for which he had significant involvement.

Thanks for your help!

Deb

Sent from my iPhone

Message

---

**From:** Kevin Bogardus [kbogardus@eenews.net]  
**Sent:** 3/3/2019 10:13:09 PM  
**To:** Jackson, Ryan [jackson.ryan@epa.gov]  
**CC:** Konkus, John [konkus.john@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Szaro, Deb [Szaro.Deb@epa.gov]  
**Subject:** RE:

Thank you for the email, Ryan. I really appreciate it. Actually, my deadline was 10 pm EST tonight so you got back to me in plenty of time.

We have decided to hold the story for now so it will not be running tomorrow morning as we had planned.

That said, what happened with the email announcing Paul Mercer's appointment as EPA Region 1 administrator? Will Paul Mercer be EPA Region 1 administrator at some point?

Please let me know when you have more information. Thanks again for your help.

Kevin Bogardus  
E&E News Reporter  
kbogardus@eenews.net  
202-446-0401 (p)  
202-247-7844 (c)  
202-737-5299 (f)

Follow me @KevinBogardus

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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

---

From: Jackson, Ryan [jackson.ryan@epa.gov]  
Sent: Sunday, March 03, 2019 11:08 AM  
To: Kevin Bogardus  
Cc: Konkus, John; Abboud, Michael; Szaro, Deb  
Subject:

# Personal Matters / Ex. 6

Ryan Jackson  
Chief of Staff  
U.S. EPA

Direct Line / Ex. 6

Message

---

**From:** Shanahan, Katherine [Shanahan.Katherine@epa.gov]  
**Sent:** 2/25/2019 2:24:29 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Subject:** RE: EPA Mercer.pdf

**Deliberative Process / Ex. 5**

**From:** Szaro, Deb  
**Sent:** Monday, February 25, 2019 9:23 AM  
**To:** Shanahan, Katherine <Shanahan.Katherine@epa.gov>  
**Subject:** RE: EPA Mercer.pdf

**Deliberative Process / Ex. 5**

**From:** Shanahan, Katherine  
**Sent:** Monday, February 25, 2019 9:20 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** RE: EPA Mercer.pdf

# Deliberative Process / Ex. 5

**From:** Szaro, Deb  
**Sent:** Monday, February 25, 2019 7:43 AM  
**To:** Shanahan, Katherine <Shanahan.Katherine@epa.gov>  
**Subject:** RE: EPA Mercer.pdf

**Deliberative Process / Ex. 5**

**From:** Shanahan, Katherine  
**Sent:** Monday, February 25, 2019 7:15 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** Re: EPA Mercer.pdf

## Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 24, 2019, at 9:20 AM, Szaro, Deb <Szaro.Deb@epa.gov> wrote:

**Deliberative Process / Ex. 5**

Sent from my iPhone

On Feb 23, 2019, at 8:34 PM, Shanahan, Katherine <Shanahan.Katherine@epa.gov> wrote:

# Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 23, 2019, at 10:58 AM, Szaro, Deb <[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)> wrote:

## Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 23, 2019, at 7:57 AM, Shanahan, Katherine  
<[Shanahan.Katherine@epa.gov](mailto:Shanahan.Katherine@epa.gov)> wrote:

## Deliberative Process / Ex. 5

K

Sent from my iPhone

On Feb 22, 2019, at 5:24 PM, Szaro, Deb  
<[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)> wrote:

## Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

**From:** Paul Mercer

## Personal Email / Ex. 6

om>

**Date:** February 22,  
2019 at 3:51:42 PM EST

**To:** "Szaro, Deb"  
<[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)>

**Subject:** Re: EPA  
Mercer.pdf

## Personal Matters / Ex. 6

**Personal Matters / Ex. 6**

On Feb 22, 2019, at  
1:11 PM, Szaro, Deb  
<[Szaro.Deb@epa.gov](mailto:Szaro.Deb@epa.gov)>  
wrote:

Thanks  
we'll  
use this  
to craft  
an  
announ  
cement  
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Sent  
from  
my  
iPhone

On Feb  
22,  
2019,  
at  
12:31  
PM,  
Paul  
Mercer

Personal Email / Ex. 6

wrote:

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Message

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**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 3/4/2019 6:31:40 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Subject:** FW: Inquiry from Inside EPA newsletter about new Region 1 administrator

Deb can you give me a call about the inquiry below?

---

**From:** Jackson, Ryan  
**Sent:** Monday, March 4, 2019 12:57 PM  
**To:** Abboud, Michael <abboud.michael@epa.gov>  
**Cc:** Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>  
**Subject:** RE: Inquiry from Inside EPA newsletter about new Region 1 administrator

# Deliberative Process / Ex. 5

**From:** Abboud, Michael  
**Sent:** Monday, March 4, 2019 12:55 PM  
**To:** Jackson, Ryan <jackson.ryan@epa.gov>  
**Cc:** Beach, Christopher <beach.christopher@epa.gov>; Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>  
**Subject:** RE: Inquiry from Inside EPA newsletter about new Region 1 administrator

# Deliberative Process / Ex. 5

# Deliberative Process / Ex. 5

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**From:** Jackson, Ryan  
**Sent:** Monday, March 4, 2019 12:50 PM



**To:** Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>

**Cc:** Beach, Christopher <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>; Block, Molly <[block.molly@epa.gov](mailto:block.molly@epa.gov)>; Hewitt, James <[hewitt.james@epa.gov](mailto:hewitt.james@epa.gov)>; Konkus, John <[konkus.john@epa.gov](mailto:konkus.john@epa.gov)>; McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>

**Subject:** Re: Inquiry from Inside EPA newsletter about new Region 1 administrator

# Deliberative Process / Ex. 5

Ryan Jackson  
Chief of Staff  
U.S. EPA

Direct Line / Ex. 6

On Mar 4, 2019, at 12:28 PM, Abboud, Michael <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)> wrote:

## Deliberative Process / Ex. 5

**From:** David Reynolds <[dreynolds@iwpnews.com](mailto:dreynolds@iwpnews.com)>

**Sent:** Monday, March 4, 2019 12:22 PM

**To:** Press <[Press@epa.gov](mailto:Press@epa.gov)>

**Subject:** Inquiry from Inside EPA newsletter about new Region 1 administrator

Hello:

We are running a story saying that Paul Mercer, EPA's appointee for Region 1 Administrator, has declined the job, and that the announcement came the day he was scheduled to begin working in that role.

I would like to ask whether you can provide any statement or comment regarding Mercer's declining the position, including whether any reason was given for his decision.

Our story also cites Boston area news reports that Region 1 has seen significant attrition in recent years resulting in increasing workloads for remaining staff.

If it is possible to provide any statement related to either Mercer's declining the job, the continued search for a Region 1 administrator, or the attrition concerns, please let me know.

We are running a story soon, probably within the next hour, but will update it online with any information you can provide.

Thank you,  
Dave

*Inside EPA* newsletter  
703-416-8541

Message

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**From:** Jackson, Ryan [jackson.ryan@epa.gov]  
**Sent:** 2/27/2019 8:59:13 PM  
**To:** **Personal Email / Ex. 6**; Szaro, Deb [Szaro.Deb@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Taylor, Jeremy [Taylor.Jeremy@epa.gov]; Glazier, Kelly [Glazier.Kelly@epa.gov]; Shimmin, Kaitlyn [shimmin.kaitlyn@epa.gov]; Terwilleger, Brock [terwilleger.brock@epa.gov]; Hewitt, James [hewitt.james@epa.gov]; Konkus, John [konkus.john@epa.gov]  
**Subject:** everyone I can think of who would be helpful - in one email  
**Attachments:** 2019-01-30 SMC letter to Wheeler Re Paul Mercer.pdf; EPA Mercer.pdf; Paul Mercer LePage letter of recommendation.pdf

# Deliberative Process / Ex. 5

Ryan Jackson  
Chief of Staff  
U.S. Environmental Protection Agency

**Direct Line / Ex. 6**

SUSAN M. COLLINS  
MAINE

413 DIRKEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-1004  
(202) 224-2523  
(202) 224-2633 (FAX)

# United States Senate

WASHINGTON, DC 20510-1004

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LABOR, AND PENSIONS  
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ON INTELLIGENCE

January 30, 2019

The Honorable Andrew Wheeler  
Acting Administrator  
Environmental Protection Agency  
Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Acting Administrator Wheeler:

I write to recommend Paul Mercer of Penobscot, Maine, for the position of EPA Region I Administrator. Paul has had a very interesting and vast professional background, including most recently serving as Commissioner of the Maine Department of Environmental Protection (DEP) for the past three years.

Paul began his working career as a graduate of the Maine Maritime Academy, traveling the globe as a Marine Engineer on U.S. merchant vessels. This was prior to the passage of the Clean Water Act, and he saw first-hand the pollution in our rivers and oceans caused by actions that are illegal today.

Much of Paul's experience has been in states within Region I. He has had leadership roles in a variety of energy and environmental projects, including biofuels, waste-to-energy, BACT applications with combustion and emissions, natural gas, and landfill gas. With this background, I believe he would be committed to working with diverse stakeholders to meet our nation's environmental standards.

As Commissioner of the Maine DEP, Paul was well-respected by the regulated community in the state. Governor LePage spoke of Paul's time as Commissioner in the following words: "Paul has worked collaboratively with businesses and advocates, as well as state and federal agencies, to protect Maine's natural resources while growing our economy. His innovative and balanced approach has helped to move our state forward while ensuring our environment is protected."

I am pleased to recommend Paul for the Region I Administrator position, and encourage your careful consideration of his candidacy. Please contact me, or have your staff contact Kayla McMurphy at (202) 224-2523, should you have any questions. Thank you for your attention to this matter.

Sincerely,



Susan M. Collins  
United States Senator

Paul Mercer and wife of 42 years, Brenda live in Penobscot Maine. Son Kyle is an Officer in the United States Air Force and daughter Carly, son in law Bill and granddaughter Elliot live in Portland Maine. Seven generations of Mercer family have been lifelong residents of the State of Maine.

As a graduate of Maine Maritime Academy, working career began traveling the globe as a Marine Engineer aboard US merchant vessels.

Personally witnessed thick foam and pollution in many of our rivers, worked on the Great Lakes at a time when thousands of dead fish floated in Lake Huron and polluted rivers caught on fire in Cleveland. Worked aboard oil tankers when it was legal and standard operations to discharge waste oil, garbage and sewage overboard, anywhere beyond twelve miles of our coast.

Thankfully those practices have all changed and are no longer legal.

Throughout career worked in a field bound by procedures, codes and regulatory requirements. Personnel and environmental safety have been the core of every job. Worked in many of the power plants, mills and manufacturing facilities within EPA Region 1 states and beyond.

Experience with energy and environmental projects include: waste to energy, hospital waste, land spreading of ash, landfill gas, biomass, biofuels, natural gas and LNG and with Best Available Current Technologies (BACT) applications with combustion and emissions. Served as construction manager, project manager, contract administrator and developer of projects all of which had to comply with strict environmental requirements. Testified as an expert witness and approved by the Maine PUC as an independent auditor for Renewable Energy Credit formulas and calculations.

Academically, as Associate Professor and Department Chair introduced courses and programs incorporating environmental engineering and ethics. Developed and conducted seminars such as the one presented to the Air Bureau of MeDEP designed to provide compliance inspectors a better understanding of combustion and its relationship to air emissions.

As a member of the senior leadership team at Maine Maritime Academy led a new and innovative Strategic Planning process presently being implemented. Along with position as Assistant to the President for Sustainability, also served interim positions: Director of Facilities, Vice President of Advancement, Vice President of Operations, and was a key driver in the development of Institutional Research. Promoted an environmental initiative designed to expose and educate students with environmental stewardship.

As commissioner at Maine DEP, worked collaboratively with constituents to promote the needs of the state and its economy with professional and personal ethics, communication and a common sense.

During tenure as Commissioner of Maine DEP and to quote Governor LePage, “ Paul’s leadership at DEP has had a positive effect on the Agency and the State. Paul has worked collaboratively with businesses and advocates, as well as state and federal agencies, to protect Maine’s natural resources while growing our economy. His innovative and balanced approach has helped to move our state forward while ensuring our environment is protected.”

As an ERIS Board member and interacting with ORD, promoted the need for ORD research to align with States needs, and for ORD scientists to visit individual states to better understand state needs and resources. These initiatives may have started but need to be prioritized.

Having earned the respect and support of other Region 1 Commissioners provides a unique opportunity to advance common and individual states interests. The natural environment, land, air and water within Region 1 is our most valuable resource. We must protect it, and do so in such a way that we can maintain and support existing business and industry. We must promote and encourage new and innovative businesses and create a sustainable economy.

Will support the mission and vision of EPA while continuing to promote Innovation. Drawing on the resources, expertise and wisdom of a talented and dedicated staff to make informed and transparent decisions. Our goal will continue to be: "the protection and preservation of our greatest resource", for present and future generations.

Honored to be considered for the position as Region 1 Administrator and will work diligently promoting the national agenda and the states issues.

Respectfully,

Paul Mercer

**Personal Address / Ex. 6**  
Personal Address / Ex. 6 Maine 04476

**Personal Phone / Ex. 6**



Paul R. LePage  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

November 2, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear President Trump,

I am writing to strongly recommend Paul Mercer, my former commissioner of the Maine Department of Environmental Protection, for a position in your administration.

Mercer has worked collaboratively with businesses and environmental advocates, as well as state and federal agencies, to move our state's economy forward while ensuring our environment is protected. His innovative leadership and balanced approach has helped business to grow and prosper while still taking care to preserve our natural resources.

Under his leadership, DEP released a new environmental education curricula for educators and students statewide to promote environmental stewardship, as well as future careers in environmental studies. Mercer has been a strong advocate for investments in wastewater treatment infrastructure and training to protect Maine's water quality.

A graduate of Maine Maritime Academy, he served on the senior management team at the academy before joining my administration. Mercer would bring strong leadership and common sense to your efforts to encourage growth in the economy while balancing the need to preserve and protect our environment.

Thank you for your consideration.

Sincerely,

Paul R. LePage  
Governor



PRINTED ON RECYCLED PAPER

PHONE: (207) 287-3531 (Voice)

TTY USERS CALL 711  
[www.maine.gov](http://www.maine.gov)

FAX: (207) 287-1034

ED\_002448\_00001761-00001

Message

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**From:** Tom and Mike [tomandmike@mac.com]  
**Sent:** 3/6/2019 5:23:26 PM  
**To:** Szaro, Deb [Szaro.Deb@epa.gov]  
**Subject:** RA

Hey Deb, I heard about Mercer pulling out at the last minute. That sucks. I' m sure there was a lot of effort put into preparing that must feel like wasted effort.

I' m thinking of you and Region 1. Good luck.

Mike K.



Message

---

**From:** Szaro, Deb [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A189E7C928E4EB3930E29543CAD5E5D-SZARO, DEB]  
**Sent:** 2/28/2019 8:08:09 PM  
**To:** [Personal Email / Ex. 6]  
**Subject:** RE: Short time for a quick Call

Yes, he works in Congressional and Intergovernmental Affairs in HQ.

---

**From:** Paul Mercer <[Personal Email / Ex. 6]>  
**Sent:** Thursday, February 28, 2019 3:07 PM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** Fwd: Short time for a quick Call

Do you know this gentleman?

Begin forwarded message:

**From:** "Rodrick, Christian" <rodrick.christian@epa.gov>  
**Date:** February 28, 2019 at 11:57:49 AM EST  
**To:** [Personal Email / Ex. 6]  
**Subject:** Short time for a quick Call

Paul,

Looking forward to have you on the team. If you had a couple minutes for a fellow New Englander (Worcester, MA) I was hoping you could give me a quick call re. the upcoming announcement?

Thanks,

**Christian Rodrick**  
*Congressional and Intergovernmental Relations*  
U.S. Environmental Protection Agency  
O: (202) 564-4828  
[Cell Phone / Ex. 6]  
E: [Rodrick.Christian@epa.gov](mailto:Rodrick.Christian@epa.gov)

Message

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**From:** Szaro, Deb [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A189E7C928E4EB3930E29543CAD5E5D-SZARO, DEB]  
**Sent:** 2/25/2019 2:02:06 PM  
**To:** Jackson, Ryan [jackson.ryan@epa.gov]  
**Subject:** RE: announcement of Paul Mercer

**Deliberative Process / Ex. 5**

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**From:** Jackson, Ryan  
**Sent:** Monday, February 25, 2019 9:01 AM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** Re: announcement of Paul Mercer

**Deliberative Process / Ex. 5**

Ryan Jackson  
Chief of Staff  
U.S. EPA

**Direct Line / Ex. 6**

On Feb 25, 2019, at 8:29 AM, Szaro, Deb <Szaro.Deb@epa.gov> wrote:

**Deliberative Process / Ex. 5**

Message

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**From:** Szaro, Deb [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A189E7C928E4EB3930E29543CAD5E5D-SZARO, DEB]  
**Sent:** 3/4/2019 6:48:36 PM  
**To:** Abboud, Michael [abboud.michael@epa.gov]  
**Subject:** FW: Breaking News: Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure

---

**From:** InsideEPA.com <insideepa-alerts@iwpnews.com>  
**Sent:** Monday, March 04, 2019 1:27 PM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** Breaking News: Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure



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March 4, 2019

## **Mercer, EPA Region 1 Administrator Pick, Withdraws At Start Of Tenure**

Former Maine environment chief Paul Mercer has declined the role of EPA Region 1 administrator on the day he was due to start the position, following environmentalists' criticism that his work under the state's former conservative governor would bolster the agency's deregulatory agenda and hurt morale in a region with shrinking staff levels.

**READ MORE →**

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### **EDITORIAL CONTACT**

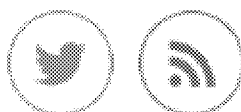
703-562-8763

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Telephone: 703-416-8500 or 1-800-424-9068

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Message

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**From:** Szaro, Deb [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A189E7C928E4EB3930E29543CAD5E5D-SZARO, DEB]  
**Sent:** 2/25/2019 12:01:51 PM  
**To:** Lindsay, Jane [lindsay.jane@epa.gov]  
**Subject:** FW: EPA Mercer.pdf

**Deliberative Process / Ex. 5**

**From:** Paul Mercer **Personal Email / Ex. 6**  
**Sent:** Saturday, February 23, 2019 6:36 PM  
**To:** Szaro, Deb <Szaro.Deb@epa.gov>  
**Subject:** Re: EPA Mercer.pdf

**Deliberative Process / Ex. 5**

On Feb 23, 2019, at 12:16 PM, Szaro, Deb <Szaro.Deb@epa.gov> wrote:

**Deliberative Process / Ex. 5**

Sent from my iPhone

On Feb 23, 2019, at 11:19 AM, Paul Mercer **Personal Email / Ex. 6** wrote:

**Deliberative Process / Ex. 5**

On Feb 23, 2019, at 10:59 AM, Szaro, Deb <Szaro.Deb@epa.gov> wrote:

**Deliberative Process / Ex. 5**

Sent from my iPhone

On Feb 22, 2019, at 3:52 PM, Paul Mercer **Personal Email / Ex. 6** wrote:

**Personal Matters / Ex. 6**

On Feb 22, 2019, at 1:11 PM, Szaro, Deb  
<Szaro.Deb@epa.gov> wrote:

Thanks we'll use this to craft an  
announcement.

Sent from my iPhone

On Feb 22, 2019, at 12:31 PM, Paul  
Mercer <[Personal Email / Ex. 6](#)>  
wrote:

Try this

<EPA Mercer.pdf>